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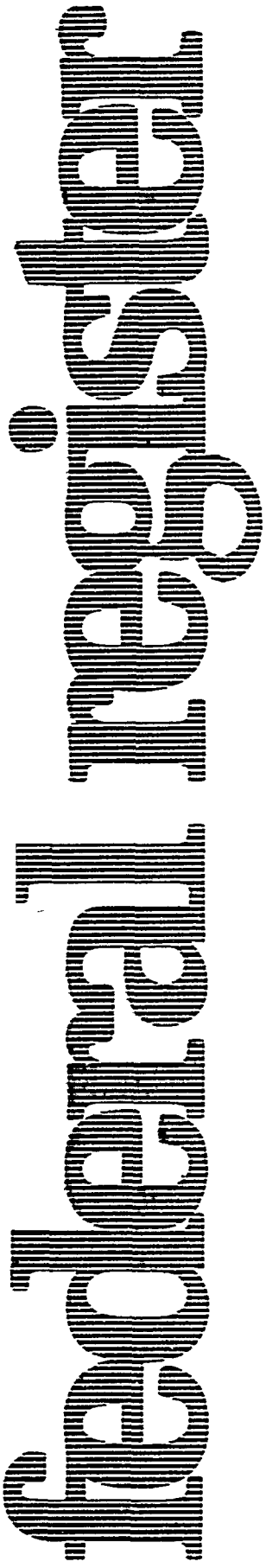

Monday
September 17, 1979

# Highlights



CONTINUED INSIDE

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Area Code 202-523-5240

# Highlights

# Contents

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## MEETINGS ANNOUNCED IN THIS ISSUE



## HEARING

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

The President

Proclamation 4684 of September 13, 1979

## United Nations Day, 1979

By the President of the United States of America

A Proclamation

Thirty-four years after its founding "to save succeeding generations of mankind from the scourge of war", the United Nations remains mankind's last best hope for building a world community based on justice, tolerance for diversity and respect for the rule of law.

The United Nations has no magic formula for solving the increasingly complex problems of our revolutionary age. Yet it remains the symbol, and the standard, of mankind's desire to turn away from ancient quarrels and live in a world in which all peoples can share in the fruits of prosperity and peace.

More than ever, the international community is challenged by problems of global dimension which can be solved only through world-wide cooperation and dialogue. The 100 new nations which have joined the United Nations since its founding are a symbol of the increasingly complex and diverse world which the United Nations confronts today.

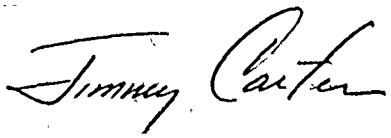
Protecting international peace and security is still the United Nations' greatest contribution and responsibility, but that political stability is only the precondition for fulfilling the larger aspirations of mankind. For all its imperfections, the United Nations remains the principal forum for the pivotal dialogue among the nations of the world on constructing a more stable, equitable, and productive economic order. It plays a leading rôle in the global management and allocation of vital natural resources. It offers an increasingly important channel for providing development assistance to many nations in the world. It offers a forum, and often a timely and effective mechanism for protecting basic human rights. The leadership of the United Nations in responding to the present refugee crisis, and the recent Geneva Meeting on that problem, represents one of the proudest examples of that world body's ability to harness world cooperation in the cause of human dignity.

The United States has historically been one of the United Nations' most active and dedicated supporters, and I have been proud to continue and expand on that support as President. Not a single day goes by when we in the United States do not call upon the United Nations, or one of its affiliates, to help deal with a problem of global dimensions. I join with many other Americans and citizens of all nations in expressing my sincere support for this unique world body on the thirty-fourth anniversary of its founding.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate Wednesday, October 24, 1979, as United Nations Day. I urge all Americans to use this day as an opportunity to better acquaint themselves with the activities and accomplishments of the United Nations.

I have appointed O. Pendleton Thomas to serve as 1979 United States National Chairman for United Nations Day, and the United Nations Association of the U.S.A. to work with him in celebrating this very special day. And I invite all the American people, and people everywhere, to join me on this thirty-fourth anniversary of the United Nations, in strengthening our common resolve to increase its effectiveness in meeting the global challenges and aspirations that we all share.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America, the two hundred and fourth.



[FR Doc. 79-28871
Filed 9-13-79; 3:07 pm]
Billing code 3195-01-M

# Presidential Documents

Presidential Determination No. 79–15 of September 13, 1979

## Determination Under Section 610(a) of the Foreign Assistance Act of 1961, as Amended, to Transfer Up to $4.8 Million to the International Disaster Assistance Account

Memorandum for the Administrator, Agency for International Development

Pursuant to the authority vested in me by Section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for purposes of the Act that up to $4.8 million appropriated under Sections 495, 531, 552 and 667 of the Act be transferred to, and consolidated with, appropriations made under Section 491 of the Act, subject to the limitation that funds so transferred shall be available only to provide assistance for the relief of the victims of Hurricane David in the Caribbean. I hereby authorize such transfer and consolidation.

You are requested on my behalf to give prompt notice of this determination, pursuant to Section 652 of the Act and Section 115 of the Foreign Assistance and Related Programs Appropriations Act, 1979, to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and to the Speaker of the House of Representatives and the Committee on Appropriations of the House of Representatives.

This determination shall be effective on September 14, 1979, and shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE,
*Washington, September 13, 1979.*

[FR Doc. 79–28922
Filed 9–13–79; 4:28 pm]
Billing code 3195–01–M

# Presidential Documents

*Correction*

Presidential Determination No. 79–14 of August 24, 1979

## Refugee Assistance for Indochina

The file line for the Presidential Determination 79–14, appearing at page 53485 in the Federal Register issue of September 14, 1979, was incorrect. The correct file line is [FR Doc. 79–28761 Filed 9–12–79; 3:17 pm].

Billing code 3195–01–M

# Rules and Regulations

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Monday, September 17, 1979



## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 919

### Peaches Grown in Mesa County, Colorado; Expenses and Rate of Assessment

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation authorizes expenses and a rate of assessment for the 19-month period beginning December 1, 1978, and extending through June 30, 1980, under the Federal marketing order covering peaches grown in Mesa County, Colorado.

**DATES:** Effective December 1, 1978, through June 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, (202) 447-5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 919, as amended (7 CFR Part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Recently, the fiscal period under the order was changed from December-November to July-June. This action would authorize budget expenses for the new fiscal period as well as for the 7-month transitional period December 1, 1978-June 30, 1979. Based on the recommendations and information submitted by the committee, established under the marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereafter provided, will tend to effectuate the declared policy of the act.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, 202-447-5975.

**§ 919.218 Expenses and rate of assessment.**

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Administrative Committee during the period December 1, 1978, through June 30, 1980, will amount to $1,584.

(b) *Rate of assessment.* The rate of assessment for the fiscal period, payable by each handler in accordance with § 919.41, is fixed at $0.01810 per cwt. of peaches.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable peaches handled from the beginning of such period which began December 1, 1978. To enable the committee to meet fiscal obligations which are now accruing, approval of the expenses and assessment rate are necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: September 11, 1979.

D. S. Kuryloski,

*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 79-28740 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-02-M

### 7 CFR Part 1011

**[Milk Order No. 11; Docket No. AO-251-A21]**

### Milk in the Tennessee Valley Marketing Area; Order Amending Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the pooling standards for supply plants based on industry proposals considered at a public hearing on September 13, 1978. The amendments allow a pool supply plant to meet its shipping requirements through both transfers and diversions of milk from the supply plant to pool distributing plants rather than just through transfers. However, no more than half of the required shipments could be by diversions. The changes permit milk to be moved more efficiently from farms to distributing plants for fluid use.

Initially, the issuance of the proposed amended order was not approved by the required two-thirds of the producers who voted in the referendum. Maintaining that the present order, absent the proposed changes, would not carry out the applicable statutory authority, the Department than proposed that the order be terminated. After considering comments filed in response to a notice of proposed termination, an order was issued to terminate the present order on September 30, 1979. Subsequently, more than two-thirds of the producers in the market indicated that they favor the issuance of the amended order. Thus, the scheduled termination of the present order is being revoked.

**EFFECTIVE DATE:** October 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing—Issued August 23, 1978; published August 28, 1978 (43 FR 38412).

Recommended Decision—Issued January 18, 1979; published January 23, 1979 (44 FR 4696).

Extension of Time for Filing Exceptions—Issued February 9, 1979; published February 15, 1979 (44 FR 9761).

Final Decision—Issued April 23, 1979; published April 26, 1979 (44 FR 24563).

Referendum Order—Issued May 21, 1979; published May 25, 1979 (44 FR 30353).

Notice Proposing Termination of the Order—Issued June 20, 1979; published June 26, 1979 (44 FR 37232).

Termination of the Order—Issued August 3, 1979; published August 9, 1979 (44 FR 46777).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth below.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tennessee Valley marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commerical activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than October 1, 1979. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Acting Deputy Administrator, Marketing Program Operations, was issued January 18, 1979, and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued April 23, 1979. Thus, affected parties have had ample notice of the changes in the amended order. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective October 1, 1979, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the Federal Register. (Sec. 533(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) A referendum was conducted among producers who during the determined representative period (February 1979) were engaged in the production of milk for sale in the said marketing area to determine whether they approved or favored issuance of this order amending the order. Less than two-thirds of the producers participating in the referendum favored issuance of this amending order.

Subsequent to the referendum, sufficient producers have expressed approval of issuance of the amending order to warrant the determination that the issuance of this order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period (February 1979) were engaged in the production of milk for sale in the said marketing area and such determination is hereby made.

In view of the above determination, the order terminating the Tennessee Valley milk order at midnight, September 30, 1979, which was issued August 3, 1979 (44 FR 46777), is hereby revoked upon publication of this document in the Federal Register.

Order Relative to Handling

*It is therefore ordered,* That on and after the effective date hereof, the handling of milk in the Tennessee Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1011.7, paragraphs (b) and (d) are revised to read as follows:

§ 1011.7 Pool plant.

* * * * *

(b) A plant, other than a plant described in paragraph (a) of this section, from which not less than 50 percent of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is physically received from dairy farmers (except by diversion from other plants) and handlers described in § 1011.9(c) at such plant or diverted therefrom pursuant to § 1011.13 during the month is shipped from such plant as fluid milk products, except filled milk to pool plants pursuant to paragraph (a) of this section. The operator of such a plant may include milk diverted pursuant to § 1011.13(c) from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the shipping percentage specified in this paragraph.

* * * * *

(d) A plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1011.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

* * * * *

2. In § 1011.9, paragraphs (b) and (c) are revised to read as follows:

§ 1011.9 Handler.

* * * * *

(b) A cooperative association with respect to milk of producers diverted to nonpool plants for the account of such association pursuant to § 1011.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk, excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant of another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

* * * * *

3. Section 1011.13 is revised to read as follows:

§ 1011.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1011.9(c); or

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant or diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1011.9(b), subject to the following conditions:

(1) A producer's milk may be diverted to another pool plant without limit in any month, and may be diverted to a nonpool plant without limit during any month of April through July;

(2) In any month of August through March, a producer's milk shall not be eligible for diversion to a nonpool plant unless at least two days' production from such producer is physically received at a pool plant during the month;

(3) In any month of August through March, the total quantity of milk diverted to nonpool plants during the month by a cooperative association shall not exceed one-third of the producer milk that the cooperative association caused to be delivered to, and is physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (c)(3) of this section. In any month of August through March, the total quantity of milk so diverted to nonpool plants shall not exceed one-third of the milk that is physically received at pool plants as producer milk for which the plant operator is the handler;

(5) Any milk diverted to nonpool plants in excess of the limits prescribed in paragraph (c)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraph (c)(3) or (4) of this section. If the handler fails to make such designation, no milk diverted by such handler to a nonpool plant shall be producer milk;

(6) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association to nonpool plants from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (c)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk; and

(8) Diverted milk shall be priced at the location of the plant to which diverted.

4. In § 1011.41, paragraph (b)(2) is revised to read as follows:

§ 1011.41 Shrinkage.

* * * * *

(b) * * *

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1011.9(c) and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be two percent;

* * * * *

5. In § 1011.42, paragraph (a) is revised to read as follows:

§ 1011.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to §1011.44(a)(12) and the corresponding step of § 1011.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1011.44(a)(7) or the corresponding step of § 1011.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1011.44(a) (11) or (12) or the corresponding steps of § 1011.44(b), the skim milk or butterfat so transferred or diverted up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).)

Effective date: October 1, 1979.

Signed at Washington, D.C., on September 12, 1979.

Jerry C. Hill,

*Deputy Assistant Secretary.*

[FR Doc. 79-28742 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1040

[Milk Order No. 40]

## Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This order suspends some provisions of the order affecting the regulatory status of milk supply plants. This suspension was requested by a cooperative association that represents a substantial proportion of the producers supplying the market. It would reduce the proportion of milk receipts at a supply plant that must be shipped to pool distributing plants during a month to qualify the supply plant for pooling. Without the suspension, it is likely that there would be inefficient movements of milk solely for the purpose of assuring that supply plants regularly associated with the market would remain pooled under the order. The suspension would be for the period October 1979 through March 1980.

**DATE:** Effective October 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of proposed suspension—issued August 10, 1979, published August 15, 1979 (44 FR 47774).

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the Federal Register (44 FR 47774) concerning a proposed suspension of certain provisions of the order. The public had an opportunity to comment on the proposed suspension in writing. Three cooperative associations supported the suspension in comments filed. No comments were filed opposing the suspension.

After consideration of all relevant material, including the proposal set forth in the notice, the comments received, and other available information, it is found that for the months of October 1979 through March 1980 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the first sentence of § 1040.7(b)(1), the words "40 percent" and "for each of the months of April through September".

As suspended, that portion of the first sentence would read "* * * not less than 30 percent of the total quantity * * *".

Statement of Consideration

The suspension will reduce for six months the proportion of milk receipts at a supply plant that must be shipped to pool distributing plants to qualify the supply plant as a pool plant. Presently, a supply plant must ship not less than 40 percent of the total quantity of Grade A milk received at the plant from producers or cooperative associations, or diverted from it to nonpool plants, to qualify as a pool supply plant during the months of October through March. The suspension reduces the proportion to 30 percent, the level which now applies during the months of April through September.

The suspension was requested by Michigan Milk Producers Association. The cooperative indicated that under a similar suspension for the months of October 1978 through March 1979, the unit of supply plants that it qualifies under the order shipped an average of 33 percent of the unit's receipts to pool distributing plants. It was claimed that these shipments were made by following normal marketing procedures and did not necessitate diverting to nonpool plants for manufacturing milk supplies that normally would be received at distributing plants directly from farms in order to make room at the distributing plants for qualifying shipments from supply plants.

During the past year there has been a shift of Class I sales out of the Southern Michigan market to the Ohio Valley market. This shift occurred when the operator of a chain of stores opened a new plant that is regulated under the Ohio Valley order and began distributing milk in some areas that formerly were supplied by a Southern Michigan pool plant.

It is the cooperative's position that without the suspension it would be necessary, in order to qualify its system of supply plants, for the cooperative to "double-haul" considerable quantities of milk (i.e., shipping supplies normally received at distributing plants to nonpool plants in order to accommodate shipments of supply plant milk). This would involve the needless use of gasoline and diesel fuel at considerable expense.

The suspension was supported by two other cooperative associations that supply milk to the market. Both cooperatives supported the suspension for the reasons set forth in the notice of proposed suspension, primarily that, without the suspension, there would be needless expenditures of money and the wasting of fuel to "double-haul" large quantities of milk. One of the cooperatives also stated that the suspension would tend to increase and improve the stability of milk marketing in the Southern Michigan market during this six-month period and it would increase the efficiency and reduce the costs of hauling milk in the market.

The suspension, which is similar to the suspension issued August 10, 1978 (43 FR 36045) for the period October 1978–March 1979, is necessary because it will enable a major supplier of milk to the market, and any others similarly situated, to maintain the continued pooling of supply plants that have regularly supplied the fluid milk needs of the market without causing a needless expenditure of money for the transportation of milk from those supply plants solely to qualify them for pooling during the period October 1979 through March 1980. The need for the suspension should be temporary because the cooperative association that requested the suspension also has requested that the pooling standards in question be amended on the basis of a public hearing.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without the suspension there would be a needless expenditure of money for the transportation of milk solely for the purpose of qualifying supply plants for pooling.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were given an opportunity to comment on the proposed suspension in writing. No comments were filed opposing the suspension.

Therefore, good cause exists for making this order effective October 1, 1979.

*It is therefore ordered,* That the aforesaid provisions of the order are hereby suspended for the months of October 1979 through March 1980.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).)

Effective Date: October 1, 1979.

Signed at Washington, D.C., on September 12, 1979.

Jerry C. Hill,

*Deputy Assistant Secretary.*

[FR Doc. 79-28743 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Parts 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1126, 1132, 1138

[Milk Order Nos. 126, 73, 97, 102, 104, 106, 108, 120, 132, and 138]

## Milk in the Texas and Certain Other Marketing Areas; Order Terminating Certain Provisions of the Orders

### 7 CFR PARTS AND MARKETING AREAS

1126 Texas
1073 Wichita, Kans.
1097 Memphis, Tenn.
1102 Fort Smith, Ark.
1104 Red River Valley
1106 Oklahoma Metropolitan
1108 Central Arkansas
1120 Lubbock-Plainview, Tex.
1132 Texas Panhandle
1138 Rio Grande Valley

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of rules.

**SUMMARY:** This document terminates the advertising and promotion program of each of the Federal milk marketing orders listed above. The action was requested by Associated Milk Producers, Inc., a cooperative association that represents a majority of the dairy farmers supplying each of the markets. Under the statutory authority for milk orders, the Secretary of Agriculture must take such action if the required number of dairy farmers in a Federal order market request it.

**EFFECTIVE DATES:** Funding provisions of the programs are terminated with respect to milk marketings on and after December 1, 1979. All other provisions of the programs are terminated February 29, 1980.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4824.

**SUPPLEMENTARY INFORMATION:** This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of each of the orders regulating the handling of milk in the aforesaid specified marketing areas.

It is hereby found and determined that the following provisions of the orders will not tend to effectuate the declared policy of the Act after the dates indicated:

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of each of the orders regulating the handling of milk in the aforesaid specified marketing areas.

It is hereby found and determined that the following provisions of the orders no longer tend to effectuate the declared policy of the Act:

Termination of Certain Order Provisions Now in Effect

A. Funding provisions for the Advertising and Promotion Program in each of the orders, as set forth below, are terminated with respect to marketings on and after December 1, 1979.

### PART 1126—MILK IN THE TEXAS MARKETING AREA

§ 1126.61 [Amended]

1. In § 1126.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1126.121(e). The result".

### PART 1073—MILK IN THE WICHITA, KANSAS, MARKETING AREA

§ 1073.61 [Amended]

1. In § 1073.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1073.121(e). The result".

### PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

§ 1097.61 [Amended]

1. In § 1097.61(a)(5), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1097.121(e). The result".

2. In § 1097.61(b) (3) and (5), the provisions, "less the withholding rate for the advertising and promotion program as computed in § 1097.121(e).".

### PART 1102—MILK IN THE FORT SMITH, ARKANSAS, MARKETING AREA

§ 1102.61 [Amended]

1. In § 1102.61(a)(4), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1102.121(e). The result".

2. In § 1102.61(b) (3) and (5), the provisions, "less the withholding rate for the advertising and promotion program as computed in § 1102.121(e).".

### PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

§ 1104.61 [Amended]

1. In § 1104.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1104.121(e). The result".

### PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

§ 1106.61 [Amended]

1. In § 1106.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1106.121(e). The result".

### PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

§ 1108.61 [Amended]

1. In § 1108.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result".

2. In § 1108.61(b) (4) and (7), the provisions, "Subtract the withholding rate for the advertising and promotion program as computed in § 1108.121(e)."

### PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

§ 1120.61 [Amended]

1. In § 1120.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1120.121(e). The result".

### PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

§ 1132.61 [Amended]

1. In § 1132.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1132.121(e). The result".

### PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

§ 1138.61 [Amended]

1. In § 1138.61(f), the provisions, "Subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1138.121(e). The result".

B. All remaining provisions of the Advertising and Promotion Programs are terminated February 29, 1980, as follows:

Parts 1126, 1073, 1097, 1102, 1104, 1106, 1108, 1120, 1132, 1138

In each of the orders, §§——.110 through ——.122 and the center heading

"Advertising and Promotion Program" immediately preceding §——.110.

*Part 1102*

Section 1102.123: Termination of certain order provisions which were issued on August 29, 1978 (43 FR 39324) to be effective on September 1, 1979 (the effective date was suspended until further notice by an order issued September 6, 1979 (44 FR 52841)).

Funding provisions for the Advertising and Promotion Program in each of the orders, as set forth below, are terminated with respect to marketings on and after December 1, 1979.

## PART 1126—MILK IN THE TEXAS MARKETING AREA

**§ 1126.61 [Amended]**

1. In § 1126.61(a)(6), the provisions, "subtract from" and "computed in paragraph (a)(5) of this section the withholding rate for the advertising and promotion program as computed in § 1126.121(e). The result".

2. In § 1126.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1126.121(e)".

3. Section 1126.61(b)(2)(v).

## PART 1073—MILK IN THE WICHITA, KANSAS, MARKETING AREA

**§ 1073.61 [Amended]**

1. In § 1073.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1073.121(e). The result".

2. In § 1073.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1073.121(e)".

3. Section 1073.61(b)(2)(v).

## PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

**§ 1097.61 [Amended]**

1. In § 1097.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1097.121(e)".

2. Section 1097.61(b)(2)(iii).

## PART 1102—MILK IN THE FORT SMITH, ARKANSAS, MARKETING AREA

**§ 1102.61 [Amended]**

1. In § 1102.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1102.121(e)".

2. Section 1102.61(b)(2)(iii).

## PART 1104—MILK IN THE RED RIVER VALLEY MARKETING AREA

**§ 1104.61 [Amended]**

1. In § 1104.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1104.121(e). The result".

2. In § 1104.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1104.121(e)".

3. Section 1104.61(b)(2)(v).

## PART 1106—MILK IN THE OKLAHOMA METROPOLITAN MARKETING AREA

**§ 1106.61 [Amended]**

1. In § 1106.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1106.121(e). The result".

2. In § 1106.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1106.121(e)".

3. Section 1106.61(b)(2)(v).

## PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

**§ 1108.61 [Amended]**

1. In § 1108.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1108.121(e). The result".

2. In § 1108.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1108.121(e)".

3. Section 1108.61(b)(2)(v).

## PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEX., MARKETING AREA

**§ 1120.61 [Amended]**

1. In § 1120.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1120.121(e). The result".

2. In § 1120.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1120.121(e)".

3. Section 1120.61(b)(2)(v).

## PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

**§ 1132.61 [Amended]**

1. In § 1132.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1132.121(e). The result".

2. In § 1132.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1132.121(e)".

3. Section 1132.61(b)(2)(v).

## PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

**§ 1138.61 [Amended]**

1. In § 1138.61(a)(6), the provisions, "subtract from" and "the withholding rate for the advertising and promotion program as computed in § 1138.121(e). The result".

2. In § 1138.61(b)(1), the provision, "by deducting the withholding rate for the advertising and promotion program as computed in § 1138.121(e)".

3. Section 1138.61(b)(2)(v).

**Statement of Consideration**

This action terminates the funding of the advertising and promotion programs in each of the orders with respect to milk marketings on and after December 1, 1979. It also terminates the other provisions of the programs on February 29, 1980. This procedure will facilitate the orderly termination of programs funded with monies collected on milk marketed prior to December 1, 1979. It will also permit the market administrators to complete audits and any other steps necessary to liquidate the programs.

The advertising and promotion programs currently provide for an assessment of 9 cents per hundredweight against all marketings of milk pooled under the order. Funds so deducted, except for reserves withheld to cover refunds and administrative costs incurred by the market administrators, are turned over to and expended by agencies organized by producers and producers' cooperative associations. The agencies are responsible for the establishment of research, advertising, and other promotional programs designed to improve the domestic marketing and consumption of milk and its products.

The programs are voluntary in that any producer not wishing to support a program may request a refund of the assessment made against his marketings of milk. Refunds are made monthly.

Termination of the programs was requested by Associated Milk Producers, Inc., a cooperative association that during the representative period designated herein represented a majority of the dairy farmers supplying each of the markets. The cooperative association requested that assessments for funding the programs not be withheld for milk marketed after November 30, 1979.

Section 608c(5)(I) of the Act provides that the Advertising and Promotion

provisions of an order may be terminated separately from other provisions of an order whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in Section 608c(16)(B) of the Act. Section 608c(16(B) of the Act requires that if a majority of the producers engaged in the production of milk for sale in the marketing area in a representative period determined by the Secretary favor termination of the order, and such producers produced more than 50 percent of the milk produced for sale in the marketing area in the representative period, that such order shall be terminated at the end of the current marketing period.

The month of May 1979 is determined to be the representative period. It is also determined that termination of the Advertising and Promotion programs in each of the orders is favored by a majority of the producers engaged in the production of milk for sale in each of the marketing areas during May 1979, and that such producers produced more than 50 percent of the milk produced for sale in each of the marketing areas during such month.

The cooperative requesting the termination has asked that the termination of the funding provisions be made effective November 30, 1979. Accordingly, the current marketing period is determined to be November 1979.

*It is therefore ordered,* That the aforesaid provisions of the order are hereby terminated on December 1, 1979, and February 29, 1980, as previously specified.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).)

Signed at Washington, D.C., on September 12, 1979.

Jerry C. Hill,

*Deputy Assistant Secretary.*

[FR Doc. 79-28741 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### 10 CFR Parts 500, 501, 502, 503, 504, 506 and 507

[Docket Nos. ERA-R-78-19-C, D, E, F, and G]

### Interim Rules To Implement the Powerplant and Industrial Fuel Use Act of 1978

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Extension of Public Comment Period for Interim Rules.

**SUMMARY:** On May 8, 1979, the Economic Regulatory Administration (ERA) issued interim rules for the implementation of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) pertaining to new facilities, the prohibition against the increased use of petroleum by existing electric powerplants, and the definitions and administrative procedures and sanctions necessary to implement the FUA program. (44 FR 28958, May 17, 1979; 44 FR 28594, May 15, 1979 and 44 FR 28530, May 15, 1979 respectively). On June 12, 1979 ERA subsequently issued an interim rule pertaining to the System Compliance Option. (44 FR 36002, June 20, 1979). The closing date set for submission of comments on these interim rules was August 15, 1979. This date was subsequently extended to September 15, 1979 when ERA issued, on July 11, 1979, an interim rule pertaining to existing facilities (44 FR 43176, July 23, 1979).

In response to requests received from several interested parties for a further extension of the public comment period, ERA is hereby extending the deadline for submission of written comments on the above interim rules to October 31, 1979. ERA believes that this further extension will result in the submission of more thorough and useful comments.

**DATES:** Comments now delivered not later than October 31, 1979 will be given full consideration.

**ADDRESSES:** All written comments should be addressed to Public Hearing Management, Room 2313, Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. 20461, Docket NO. ERA-R-78-19-C, D, E, F, or G.

**FOR FURTHER INFORMATION CONTACT:**

William L. Webb (Office of Public Information), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

John L. Gurney (Regulations and Emergency Planning), Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 2130, Washington, D.C. 20461, (202) 254-9766.

Gary R. Comstock (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, N.W., Room 7134, Washington, D.C. 20461, (202) 633-8820.

Issued in Washington, D.C., September 13, 1979.

David J. Bardin,

*Administrator, Economic Regulatory Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21, 23, 36, 91, 121, 135, 139

[Docket No. 18315; Amendment Nos. 91-159 and 135-2; SFAR No. 41]

### Airworthiness Standards: Reciprocating and Turbopropeller-Powered Small Multiengine Airplanes—Increase in Approved Takeoff Weights and Passenger Seating Capacities

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Special Federal Aviation Regulation (SFAR) which prescribes additional airworthiness standards applicable to existing propeller driven multiengine small airplanes to allow their type and airworthiness recertification at weights in excess of the limitation of 12,500 pounds maximum certificated takeoff weight, or with an increase in the number of passenger seats, or both. The rules applicable to air taxi and commercial operators (Part 135) are amended to allow the operation of airplanes certificated under the SFAR. In addition, the operating rules (Parts 91 and 135) are amended to require that airplanes certificated under the SFAR at weights in excess of 12,500 pounds: meet updated interior material flammability requirements within one year of initial airworthiness certification. These amendments are intended to allow the design capabilities of certain existing small airplanes to be more fully utilized. They are also designed to increase aircraft availability for the commuter market that is burgeoning since enactment of the Airline Deregulation Act of 1978.

**EFFECTIVE DATE:** October 17, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Raymond E. Ramakis, Safety Regulations Staff (AVS-24), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591 Telephone (202) 755-8716.

#### Background

In general, under the Federal Aviation Regulations (FAR) relating to certification, airplanes are treated, as they have been for many years, as either small or large. Numerous pilot, operating, and maintenance requirements of the FAR utilize the same small and large distinction. In addition,

the International Civil Aviation Organization (ICAO) uses this weight distinction. The distinction is based on the maximum certificated takeoff weight (MCTW) of the airplane. For airplanes with an MCTW of 12,500 pounds or less, the airplane is defined in § 1.1 of the FAR as small. Airplanes with an MCTW of more than 12,500 pounds are defined as large.

The 12,500 pound weight distinction, adopted in 1953, was based in part upon certain airplane and powerplant design considerations which were then considered significant. Over the past 26 years, however, numerous additional operational factors have developed and must be considered in airplane design. In fact manfacturers have asserted that the 12,500 pound weight distinction no longer provides an appropriate demarcation between small and large airplanes.

A number of recent requests for exemption or for rule change concerning this weight distinction have been made by operators who utilize airplanes with an MCTW of exactly or very near 12,500 pounds. The operators assert that these airplanes are capable of operating safely at maximum takeoff weights in excess of 12,500 pounds. In addition, they have indicated that this weight limit has the effect of reducing safety margins by preventing the installation of additional navigational equipment and by preventing the installation of increased fuel reserves. Based on these comments and requests and the claimed overall safety benefit, the FAA issued a specific proposal (Notice No. 78–14, 43 FR 46734, October 10, 1978) to allow certification and operation of certain small airplanes at MCTW's in excess of 12,500 pounds.

Current airworthiness standards exist for two basic designations of airplanes: Part 23 for airplanes 12,500 pounds or under having nine or less passenger seats and Part 25 for transport category airplanes. Commuter airlines and air taxi operators in the United states, which have grown substantially in recent years, have demonstrated a need for airplanes which are not fully transport category but exceed the size limitations of Part 23.

Recognizing the need for improved standards for airplanes intended for commuter operations, the Administrator initiated a three-phase program. The first phase was the issuance of a revised Part 135, "Air Taxi Operators and Commercial Operators" on September 26, 1978 (43 FR 46742, October 10, 1978) which aligned the rules for those operations more closely with those of Part 121. The second phase was the initiation of the Light Transport Airplane Airworthiness Review (43 FR 60846, December 28, 1978) which will result in a separate set of airworthiness standards for multiengine airplanes with a suggested 30 passenger seating capacity and maximum gross weight of about 35,000 pounds. The third phase was the issuance of Notice 78–14 initiating this rulemaking action by proposing an increase in approved takeoff weights and passenger seating capacities for existing small airplanes that meet stated requirements.

Notice 78–14 proposed special certification requirements and changes to operating rules applicable to air taxis and commercial operators of small airplanes which would allow the design capability of certain existing propeller-driven multiengine small airplanes to be more fully utilized. The proposed certification requirements are of an interim nature and therefore formulated as a Special Federal Aviation Regulation (SFAR).

The essential provisions that were proposed in Notice 78–14 are being adopted by this amendment. The new rules will allow the certification of propeller-driven multiengine small airplanes with a passenger seating configuration of between 10 and 19 seats that were originally type certificated in accordance with Part 23 of the FARs in effect on March 13, 1971 or later. The new rules will also allow the certification and operation, with appropriate restrictions and limitations, of small propeller-driven multiengine airplanes at maximum takeoff weights in excess of 12,500 pounds.

The interim nature of the SFAR is reflected in the time limits imposed. The amendment provides that an application for aircraft supplemental or amended type certification under the SFAR must be filed within two years after the effective date of the SFAR, while production of airplanes certificated with maximum takeoff weights in excess of 12,500 pounds will be limited to 10 years after the effective date of the SFAR. The 10 year period is intended to provide the time needed to develop the new FAR Part 24 and for airplane manufacturers to demonstrate compliance with the new part.

The international implications of the amendment should be noted. The United States as a contracting State of ICAO is under agreement to comply with the Convention on International Civil Aviation. Annex 8 to the Convention contains international standards of airworthiness applicable to certification of airplanes having an MCTW in excess of 5,700 kg (approximately 12,500 pounds). The airworthiness standards set forth in the SFAR are not intended to and do not meet the Annex 8 requirements. Therefore, airplanes certificated in accordance with the SFAR that operate at weights in excess of 5,700 kg would be prohibited from international navigation unless specifically allowed by the countries of overflight or entry. These airplanes' airworthiness certificates would be appropriately endorsed. In addition, the international airman licensing and aircraft operating provisions in Annexes 1 and 6 to the Convention on International Civil Aviation must be met to operate these airplanes on international flights. The FAA is aware of the potential problems that this dichotomy will create. It is the FAA's intention to have this matter brought to ICAO's attention for resolution at an early date.

Turbojet powered multiengine airplanes are not covered in this amendment because these high performance airplanes require more stringent airworthiness provisions than those applicable to propeller driven multiengine small airplanes. Therefore, at the present time, Part 25 of the FAR, where applicable, continues to be an appropriate standard for these airplanes.

Interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all matter presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review within the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, these amendments and the reasons for them are the same as those contained in Notice No. 78–14.

These amendments implement the President's directive (Executive Order 12044) that regulations be as simple as possible and not impose unnecessary burdens on the economy or on the regulated public. They also are designed to promote the public interest by increasing safety, availability of aircraft, and efficiency.

## Discussion of Comments

Twenty-two individual sets of comments were submitted in response to Notice 78–14. Many of these addressed more than one aspect of the proposals. While the great majority of the commenters were in general agreement with the objectives of the proposals, a number of them offered criticisms or suggested changes to the proposed rules or requested clarification and guidance on compliance with the rules.

One commenter recommended that the SFAR not be adopted on the ground that small airplane airworthiness standards would be applied to airplanes of over 12,500 pounds which up to this time have been required to meet transport category standards. The FAA does not agree. The SFAR incorporates additional airworthiness requirements designed to provide the necessary level of safety for a type of airplane that has not heretofore had regulations specifically developed for it. As noted in the background discussion, the SFAR provides interim standards to enable greater utilization of existing airplanes when those airplanes meet the higher standards of the SFAR even though they may not meet transport category certification requirements.

Among the comments received were recommendations for various requirements not proposed in the notice. Among these were recommendations for less than the minimum number of required exits in freight-only airplanes, for determination of takeoff distance based on criteria different than currently required, for bird strike protection in front of pilots, for establishment of life limits for components not presently subject to such limits, and freedom from flutter after various trim tab failures. None of these recommendations were supported by justification from a safety standpoint for imposing the additional burden or lesser standard involved and the FAA does not have information to indicate the need for such requirements at this time.

The comments related to specific elements of the proposal are discussed below under the like-numbered paragraphs of the SFAR and the applicable Part 135 sections as proposed.

1. *Special Federal Aviation Regulation*

Section 1. *Applicability.*—Six commenters questioned the need to impose the additional performance requirements of Appendix A, Part 135, in order to achieve an increase in passenger seating capacity or an increase in maximum certificated takeoff weight (MCTW). These commenters asserted that the requirements contained in SFAR 23 are adequate. At the other extreme, one commenter recommended that Part 25 performance requirements be made applicable for weights exceeding 12,500 pounds. Such generalized comments, however, do not address the reasons for the proposed interim SFAR standards which have been set forth in the various notices explaining the Administrator's three-phase program or provide a basis for now altering the proposals.

In more specific vein, one commenter believed it inconsistent that under the proposal some 19 passenger airplanes would have to comply with the entire new SFAR whereas others would have to comply only with Appendix A to Part 135. This commenter recommended that all 10–19 passenger airplanes, regardless of weight, comply with the proposed requirements that would be applicable to airplanes originally type certificated to Part 23 regulations in effect on March 13, 1971, or later. Under the proposal, airplanes to be certificated at MCTW over 12,500 pounds regardless of the number of passengers would have to meet not only the modified requirements of Appendix A but the additional requirements contained in the new SFAR.

The difference in certification requirements under the proposed SFAR is not dependent on the number of passengers but the MCTW of each airplane. Section 1.(a) of the SFAR is limited to those airplanes that do not exceed 19 passenger seats, have a MCTW of 12,500 pounds or less, and were originally type certificated to include Amendment 23–10. Section 1.(a) has been clarified with respect to the weight limitations. Section 1.(b) on the other hand, and in response to another commenter's request for clarification, covers all normal category airplanes to be certificated at MCTW in excess of 12,500 pounds. Thus to certificate an Amendment 23–10 airplane for 19 passengers at an MCTW in excess of 12,500 pounds, the airplane would have to meet the requirements of section 1.(b). Since the added requirements of section 1.(b) go with the increased weight above 12,500 pounds, there is no inconsistency in the applicability.

With respect to its applicability for other than Amendment 23–10 airplanes, the new SFAR does not apply to a normal category airplane, originally type certificated in accordance with Part 23 in effect prior to March 13, 1971 (i.e. not including Amendment 23–10), that is to be certificated for an increase in passenger seating capacity unless that airplane is to be certificated for a maximum takeoff weight in excess of 12,500 pounds. If the weight does not exceed 12,500 pounds, the regulations incorporated in the type certificate apply to an increase in passenger seating capacity as well as to an increase in MCTW that does not exceed 12,500 pounds. Furthermore, this rulemaking action is not intended to impose retroactive requirements on airplanes of older type design, as questioned by one commenter, when there is to be no change in the number of seats or MCTW. It should also be noted that under section 1.(b) of the SFAR, there is no limitation on the number of passenger seats for which the airplane may be certificated when the MCTW exceeds 12,500 pounds although regulations governing operations impose other limitations on the number of passengers. Section 1.(b) has been changed to clarify that the passenger seating configuration may be increased if the applicant so requests.

One commenter objected to provisions of the SFAR which were interpreted as allowing increased weight and derogated performance at the expense of safety. However, contrary to the commenter's concern, an airplane must comply with the minimum performance standards as well as the other requirements of the SFAR, under which it will be safe to operate notwithstanding the increase in weight and lessened performance. Under the SFAR, if increased weight prevents the airplane from meeting the minimum performance requirements, the airplane does not meet the required level of safety and it would not be certificated.

With respect to section 1.(b), six commenters contended that compliance with the performance requirements of Appendix A of Part 135 at all operating weights below 12,500 pounds, would unfairly penalize airplane performance. According to these commenters, the Appendix A performance requirements, although appropriate for MCTW above 12,500 pounds, place additional unneeded restrictions on airplane weight on hot days, at high altitudes, and on short runways when the takeoff weight does not exceed 12,500 pounds in any event. Asserting that such restrictions are inconsistent with the stated purpose of the proposal to allow full utilization of an airplane's design capabilities, they recommended that SFAR 23 performance standards apply to weights up to 12,500 pounds and Appendix A performance standards to weights above 12,500 pounds.

The FAA agrees with the analysis that shows compliance with Appendix A performance requirements may be unnecessarily restrictive at weights of up to 12,500 for airplanes that were not required to meet Appendix A as a type certification requirement. Moreover, for airplanes to be certificated under the SFAR at maximum certificated takeoff weights of more than 12,500 pounds, it was not the FAA's intent to change the certification basis of such airplanes for takeoff weights of 12,500 pounds or less. Thus, where an airplane's preexisting certification basis does not include Appendix A but the airplane with 10 or

more passenger seats is qualified for operations under Part 135 or is certificated under Part 23 in effect prior to amendment 23–10 and is to be used only in Part 91 operations, there appears to be no safety reason why the airplane's certification basis needs to be changed for weights at which the airplane is currently operating. Although the commenters emphasized only the performance requirements of Appendix A as being unnecessarily restrictive at weights below 12,500 pounds, the FAA has determined that any of the requirements of Appendix A may be included within the exception for an airplane whose certification basis provides the required level of safety, regardless of the number of passengers at weights up to 12,500 pounds. Therefore, an exception has been added as section 5.(b) of the SFAR which provides relaxation from the requirements of the notice to allow compliance with the regulations incorporated in the type certificate in lieu of complaince with Appendix A at takeoff weights of 12,500 pounds or less for specified airplanes. For all takeoff weights above 12,500 pounds the airplane must meet the Appendix A requirements as modified by the other section 5 exceptions.

Section 1.(b)(3) of the SFAR requires compliance with sections 7 through 14 of the SFAR as an additional condition for certification at MCTW in excess of 12,500 pounds. For reasons similar to those discussed above in connection with Appendix A requirements, it was the intent that these requirements not constitute a new certification basis for takeoff weights at or below 12,500 pounds but rather provide additional requirements for takeoff weights in excess of 12,500 pounds. Section 1.(b)(3) has been amended to make this clear.

Two commenters asked what modifications it would be permissible to make in order to take advantage of the proposal. It was not the intent to identify or otherwise limit the specific modifications that might be necessary in any particular case to meet the proposal. Any modification that would enhance an airplane's ability to meet the applicable requirements of the new SFAR would be permissible. In this connection, however, it should be noted that the new SFAR by its terms is limited to amended and supplemental type certification of airplanes previously certificated in the normal category. Therefore, the limitations contained in § 21.19, and in Subparts D and E of Part 21 relative to such certification, also apply.

One commenter objected to the proposal in the belief that it would increase the noise contours due to the added weight requiring more power for takeoffs of airplanes recertificated under section 1.(b). On the other hand, two commenters suggested that the maximum allowable noise should be increased above the levels allowed for small airplanes as proposed in the notice. The considerations involved in these comments result from proposed SFAR section 1.(c) which would define an airplane certificated under section 1.(b) as a small airplane for purposes of Part 36. The comments do not explain how or why persons on the ground exposed to the modified airplanes would be subjected to more noise than is now permitted for the existing certificated airplanes.

The proposal will not increase noise contours. The SFAR standards must be met regardless of engine power or thrust available or used for takeoff. Therefore, the effect of the increased weight on takeoff noise output must be accounted for and kept within present noise limits. The comments do not provide any basis for modifying the proposal with respect to noise.

With further reference to paragraph 1.(c), since "small aircraft" are defined in Part 1, the intent was that airplanes certificated under section 1.(b) be considered small airplanes for purposes of the parts listed rather than be "defined" as small airplanes. Accordingly, a nonsubstantive change has been made in section 1.(c) to clarify the point. The definitions of small and large aircraft set forth in Part 1 remain unchanged.

Finally, upon review of section 1.(c) by the FAA, it is noted that Part 139 was inadvertently omitted from the listing of Parts under which an airplane certificated under section 1.(b) of the SFAR would be considered a small airplane. FAR § 139.12a provides for the issuance of a limited airport operating certificate for an airport serving CAB-certificated air carriers conducting only unscheduled operations with small aircraft. Unless the newly certificated aircraft are "small" aircraft, airports serving them would no longer be eligible for the limited certificate and would have to obtain a regular or full certificate. For this reason, Part 139 is added to the listing in section 1.(c).

2. *Eligibility.*—No unfavorable comments were received on the proposal and the section is adopted without substantive change.

3. *Production Limitation.*—One commenter recommended that the proposed 10-year limitation for receiving original airworthiness certificates based on an amended or supplemental type certificate issued under the SFAR be increased and made indefinite. This commenter cited the high cost of certification as the only justification. The FAA agrees that the high cost of certification is one factor to be considered. However, in view of the proposed Part 24, the intent is that the SFAR provisions be self-limiting as to time. It is the intent of Part 24 to construct a regulation that reflects the state of the art for the entire aircraft. Therefore the reason for the limitation is to ensure that once Part 24 aircraft are available, these will be the aircraft on the market because Part 24 aircraft will represent a significant safety increase over the aircraft produced pursuant to this SFAR.

Another commenter requested verification of his understanding that once an airplane receives an airworthiness certificate under the SFAR procedures, no life limit is otherwise imposed by the SFAR. That understanding is correct. The 10-year limitation applies only to obtaining the initial airworthiness certificate under an amended or supplemental type certificate issued under the SFAR. Once issued, the duration of the airworthiness certificate is governed by the same rule applicable to other standard airworthiness certificates.

Both of the foregoing comments indicate there may have been some ambiguity in the proposed rule due to the reference to an "original" airworthiness certificate. Actually, in a case where an aircraft is modified to conform to an amended or supplemental type certificate, it is possible that there may not be an issue of an original airworthiness certificate. The intent was to impose the 10-year limit on obtaining whatever form of airworthiness certificate results from the changed type certificate. Section 3 has therefore been clarified by specifying an original or amended airworthiness certificate.

4. *Restrictions.*—No unfavorable comments were received on the proposal and the section is adopted without substantive change.

5. *Exceptions.*—No unfavorable comments were received on section 5.(a) and it is adopted without substantive change.

Section 5.(b) contains the general exception to the requirements of Appendix A Part 135 for certain airplanes. This was discussed in connection with section 1.(b) of the SFAR concerning applicability of the SFAR to airplanes with an MCTW of over 12,500 pounds.

With reference to landing performance requirements, one

commenter stated that the proposal could be interpreted to require a double application of the effective runway length factor specified in section 7 of Appendix A of Part 135. The ambiguity results because the airplanes are also subject to the requirements of §§ 135.385 and 135.387 which specify like factors. The problem does not arise outside the SFAR since the landing requirements of Appendix A apply only to normal category airplanes while those of §§ 135.385 and 135.387 apply only to large transport category airplanes. The SFAR as proposed could be interpreted to mean that airplanes would be subject to both sets of requirements. The FAA agrees that the effective runway length requirement should be clarified since there is no intent that the factor be applied twice. In addition, the proposed landing performance requirements did not require consideration of wind corrections. For these reasons, the proposed requirement to comply with section 7, as well as with related §§ 19.(b)(3) and 19.(c), of Appendix A of Part 135 has been deleted and the applicable landing performance requirements, not covered in §§ 135.385 and 135.387, are included in an new section 5.(c) of the SFAR.

The fatigue evaluation standards set forth in proposed section 5.(b) (section 5.(d) as adopted) are stricter than those in Appendix A and apply where the MCTW exceeds 12,500 pounds. One commenter recommended that the proposed fatigue requirement also be applied to those airplanes whose passenger seating capacity is increased above nine even though the weight does not exceed 12,500 pounds. However, the commenter presented no justification to show that the current safety requirements are inadequate or that the fatigue evaluation standards should be extended to airplanes of 12,500 pounds or less.

Another commenter objected to the proposal which would allow fatigue strength evaluation to be conducted by analysis alone. It was contended that tests should be required because of adverse service experience reported with surplus military aircraft which had sustained structural damage due to overloading. However, such experience is not relevant to type certification standards since evaluation of the structure must be made under the conditions and loads expected in service. The FAA does agree that there should be limitations on the analysis-alone evaluation and a recent amendment to § 23.572(a)(1) provides such a limitation. Accordingly, the fatigue strength investigation requirement is modified to be consistent with the current Part 23 type certification requirement by specifying that analysis alone is acceptable only when it is conservative and applied to simple structures.

Section 5.(c) proposed additional door and exit requirements considered necessary for safety at the higher weights. Two commenters suggested that movable seat backs be allowed to obstruct window-type emergency exits but presented no evidence to show that an equivalent level of safety would be achieved. The commenters also questioned the need for the door locking mechanism to be visible from within the fuselage; however, even though the proposal requires visual inspection by crewmembers, it does not specify that the inspections must be conducted from within the airplane. Thus, external inspection, as of cargo doors could be made though appropriate openings or transparent coverings. Finally, one commenter was of the opinion that the number of emergency exits could be reduced so long as the 90-second evacuation test was met; however, those are not alternative requirements, and no justification was given for not meeting both. The door and exit requirements are adopted as substantively proposed and designated section 5.(e).

No unfavorable comments were received on the lightning strike protection requirements proposed in section 5.(d) and it is adopted as section 5.(f) without substantive change.

Three commenters questioned the need for the fire containment requirement of section 5.(e) when there are other requirements that speak to fire extinguishment. However, extinguishment and containment are separate requirements. Containment prevents an engine fire from spreading to the rest of the airplane before the fire can be extinguished. With respect to containment, the proposal referred to burn-through of the external skin whereas any burn-through that could create additional hazards is the condition to be prevented. The paragraph has been amended to make this clarification. Serveral commenters suggested the use of heat-resistant coatings in place of fireproof cowlings; however, the basic requirement is for containment without specifying the means. A heat-resistant coating that merely delays burn-through would not be in compliance with the requirement. Finally, a number of commenters objected to applying the fire containment requirement to turbine-powered airplanes, but their asserted lack of fire history statistics does not justify avoidance of a safety standard intended to cover the over 12,500 pound weight category for which there is no actual operating experience. The requirements are adopted as substantively proposed and designated as section 5.(g).

Section 5.(f) proposed that the flammable fluid fire protection requirements of Part 25 be used in lieu of section 57 of Appendix A. Seven commenters questioned the need for and practicability of complying with the more stringent requirements of Part 25. However, in this connection, it should be noted that the regulatory intent is for all aircraft to conform to a uniform minimum standard for flammable fluid fire protection. To this end, FAR Parts 23, 27, and 29 were amended after the issuance of Notice 78-14 to be consistent with updated Part 25 requirements. At the time of issuing Notice 78-14, the minimum acceptable standards for flammable fluid fire protection for the new category SFAR airplanes was contained in § 25.863 then in effect. The commenters have presented no justification for relaxing the safety standard set forth in the notice, and section 5.(f) (redesignated 5.(h)) is adopted as proposed.

6. *Additional requirements—general.* This section states, in effect, that the additional requirements specified in succeeding sections of the SFAR apply to airplanes to be certificated at MCTW in excess of 12,500 lbs. Two commenters raised general objections—one that such requirements should not apply if the passenger capacity does not exceed 19, the other that retrofit to such standards would be costly in weight and dollars. The FAA does not deny that to meet the additional requirements may be costly, but the commenters presented no reasons why the requirements, considered collectively, would not be necessary in the interest of safety or why 19 passengers should be a cutoff point rather than 12,500 pounds. The FAA considers the SFAR requirements to be minimum safety standards necessary for the new category airplanes. Moreover, nothing compels exceeding a 12,500 pound MCTW so that compliance is a matter of choice with an operator who must decide if such compliance is economically feasible in his particular case.

Comments addressed to individual additional requirements are discussed below.

7. *Compartment interiors.* This section states various requirements relating to cabin materials, smoking, disposal receptacles, lavatories, and hand fire extinguishers. All the comments objecting to section 7 were directed to

the requirement for materials. One group of commenters objected because of the alleged high cost to retrofit older airplanes and the alleged lack of history of in-flight fires on this type aircraft. Two other commenters contended that it would not be economically feasible to comply immediately with the interim material requirements.

The FAA does not agree that the cost of cabin interior materials to meet the flammability requirements of proposed section 7.(a) is sufficient justification for not imposing them. Neither have the commenters shown that the alleged lack of history of in-flight fires supports a withdrawal of the requirement. Actually there is no operating history for this new class of airplane and the commenters have not addressed the need for safety measures necessary to achieve the level of safety at the higher weights. The proposed cabin material requirements are the same as those specified for transport catergory airplanes under Part 25. The FAA does agree that it would be reasonable to grant additional time in which to install the materials. The burden of refurbishing the cabin materials would be substantially lessened if operators could take advantage of periods when their airplanes are down for extended periods.

In view of these considerations, the cabin material requirements of section 7 and the Appendix are deleted from the SFAR. In place thereof, the operating rules of Parts 91 and 135 are amended by adding a requirement that airplanes certificated under the SFAR at MCTW in excess of 12,500 pounds must meet the compartment interior material requirements of § 25.853(a), (b), (b–1), (b–2,) and (b–3) within one year after receiving an airworthiness certificate under the SFAR.

8. *Landing Gear.* In response to one inquiry as to the applicability of § 25.721(b) to fixed landing gear airplanes, the rule requires compliance only when one or more landing gear legs is not extended. Since this condition would not exist in a fixed landing gear airplane, the rule would not be applicable. Resubstantiation of fixed langing gear to Part 25 ground load standards, as questioned by that commenter, would not be necessary since the initial airplane certification under Part 23 is sufficiently conservative for a maximum zero fuel weight that does not exceed 12,500 pounds.

9. *Fuel system components crashworthiness.* This section requires compliance with certain Part 25 rules under various emergency landing conditions. There should be no confusion as to their applicability in the case of fixed landing gear airplanes as questioned by one commenter. Thus, § 25.561(b)(2) clearly states that the wheels are retracted (where applicable) and then specifies the inertia forces that may result. It is these inertia forces that the fuel tanks must be able to resist irrespective of the type of landing gear. Section 25.994, by its terms, is clearly not applicable to fixed landing gear airplanes since it refers specifically to the condition of wheels-up landing.

10. *Shutoff means.* No specific objection was made to this section and it is adopted substantively as proposed.

11. *Fire extinguishing systems.* The National Transportation Safety Board (NTSB) expressed the view that a fire detection system is a prerequisite to a fire extinguishing system. Under the proposal, turbopropeller-powered airplanes would be required to have a detector system in compliance with Part 135, Appendix A, as would multiengine reciprocating engine powered airplanes incorporating turbosuperchargers under current § 23.1203. However, older airplanes not covered by current § 23.1203 and those not equipped with turbosupercharger-equipped reciprocating engines would not be required under the proposal to have fire detection systems. The NTSB therefore recommended that the final rule require fire detection systems for all reciprocating-engine powered airplanes. The NTSB views were also expressed by another commenter. The FAA agrees. The intent of the proposal to provide adequate fire extinguishment can best be achieved by inclusion of the detecting system requirement. Moreover, without a detection system, airplanes that could be certificated under the proposed SFAR at the higher MCTW would be operating at a different and lower level of safety than that now applicable to Part 23 airplanes. Accordingly, to assure that necessary safety standards are applied uniformly to all airplanes eligible for certification under the SFAR, paragraph 11 is modified to include the requirement for a fire detection system in all airplanes.

A number of commenters objected to the requirement for the two-bottle discharge extinguisher capability in engine compartments. It was their contention that in-flight fire statistics did not justify such redundancy and that the over-protection would impose a payload sacrifice and be expensive. In this connection, neither Part 23 nor Appendix A of Part 135 requires an extinguisher system. Upon reconsideration of the proposal, and consistent with the recognized need for improved standards for the category of airplanes to be certificated under the SFAR, the FAA has concluded that a system to provide a "one-shot" discharge to each designated fire zone is the minimum safety standard for the new category airplanes. Section 11.(b) [now 11.(b)(2)] has been changed accordingly.

12. *Fire extinguishing agents.*

13. *Extinguishing agent containers.*

14. *Fire extinguishing system materials.*

The comments received were directed to fire extinguishing systems in general under section 11 rather than to the specific areas covered in sections 12, 13, and 14. Sections 12, 13, and 14 are adopted as substantively proposed. In the notice, section 13 inadvertently referenced § 25.1189 although by subject matter it is clear that § 25.1199 was intended. Section 13 has been corrected accordingly.

15. *Expiration.* One commenter's inquiry regarding applicability of this section appears to be questioning, in effect, the duration of supplemental and amended type certificates issued under the SFAR and the airworthiness certificates derived from them. These points have been discussed in detail earlier in this preamble in connection with sections 1 and 3. The section is adopted substantively as proposed.

*Discussion on proposals concerning Part 135*

*FAR § 135.169.* No unfavorable comments were received on the proposal to amend § 135.169 and the proposal is adopted without substantive change. However, the general reference to airplanes type certificated in compliance with the SFAR has been expanded to refer separately to those certificated under sections 1.(a) and 1.(b). This distinction is necessary for clarity because of the separate references required in § 135.399.

*FAR § 135.399.* The proposed addition to § 135.399 would require airplanes certificated under the SFAR to comply with the landing limitations that are applicable to large transport category turbine-engine powered airplanes under Part 135 at destination and alternate airports. Two commenters believed it would be confusing to incorporate regulations whose indicated applicability is only to large transport category turbine-engine powered airplanes when the affected airplanes are non-transport category and include those with reciprocating engines. The FAA agrees and the paragraph, as adopted, has been changed to clarify this applicability.

One commenter noted that the proposed § 135.399(b) would require

compliance with landing limitations but nothing was proposed to revise § 135.399(a) to implement the takeoff limitations for the new SFAR airplanes. According to the commenter this was a serious omission because takeoff performance limitations are usually more critical in operation. The FAA agrees that takeoff weight limitation requirements are as much applicable to SFAR airplanes as they are to the normal category airplanes already covered by the rule. Section 135.399(a) is amended accordingly. In addition, the landing weight limitation requirements applicable to airplanes certificated in accordance with paragraph 1.(a) of the SFAR (i.e. airplanes meeting Appendix A of Part 135) are transferred from § 135.399(b) as proposed to § 135.399(a). This non-substantive change makes § 135.399 internally consistent since landing weight limitations of non-SFAR airplanes meeting Appendix A are already covered in § 135.399(a).

Adoption of the Amendment

**PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS**

**PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES**

**PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION**

**PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS: AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

**PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CAB-CERTIFICATED AIR CARRIERS**

Accordingly, the Federal Aviation Regulations (14 CFR Chapter I) are amended, effective October 17, 1979, as follows:

1. By adding the following new Special Federal Aviation Regulation:

Special Federal Aviation Regulation No. 41

1. *Applicability.*

(a) Contrary provisions of Parts 21 and 23 of the Federal Aviation Regulations notwithstanding, an applicant is entitled to an amended or supplemental type certificate in the normal category for a reciprocating or turbopropeller-powered multiengine small airplane originally type certificated in accordance with Part 23 of the Federal Aviation Regulations in effect on March 13, 1971, or later, that is to be certificated with a passenger seating configuration, excluding pilot seats, of 10 seats or more (but not more than 19 seats) at a maximum certificated takeoff weight of 12,500 pounds or less, if the applicant complies with—

(1) The regulations incorporated in the type certificate; and

(2) The requirements of Appendix A of Part 135 of the Federal Aviation Regulations in effect on September 26, 1978.

(b) Contrary provisions of Parts 1, 21, 23, 91, 121, and 135 of the Federal Aviation Regulations notwithstanding, an applicant is entitled to an amended or supplemental type certificate in the normal category for a reciprocating or turbopropeller powered multiengine airplane that is to be certificated with a maximum takeoff weight in excess of 12,500 pounds, a maximum zero fuel weight not in excess of 12,500 pounds, and, where requested by the applicant, an increase in passenger seating configuration, if the applicant complies with—

(1) The regulations incorporated in the type certificate;

(2) The requirements of Appendix A of Part 135 of the Federal Aviation Regulations in effect on September 26, 1978 with the exceptions specified in section 5 of this Special Federal Aviation Regulation; and

(3) The additional requirements specified in sections 7 through 14 of this Special Federal Aviation Regulation applicable to takeoff weights in excess of 12,500 pounds.

(c) Contrary provisions of Part 1 of the Federal Aviation Regulations notwithstanding, an airplane certificated under paragraph (b) of this section is considered to be a small airplane for purposes of Parts 21, 23, 36, 121, 135, and 139 of the Federal Aviation Regulations, and a large airplane for purposes of Parts 61 and 91. Compliance with the small airplane provisions of Part 36 of the Federal Aviation Regulations must be shown at the maximum certificated takeoff weight approved under this Special Federal Aviation Regulation.

2. *Eligibility.* Any person may apply for a supplemental type certificate (or an amended type certificate in the case of a type certificate holder) under this Special Federal Aviation Regulation.

3. *Production limitation.* An amended or supplemental type certificate issued pursuant to section 1.(b) of this Special Federal Aviation Regulation is effective for the purpose of obtaining an original or an amended airworthiness certificate, until October 17, 1989 unless the type certificate is sooner surrendered, suspended, revoked, or terminated.

4. *Restrictions.* For airplanes certificated under section 1.(b) of this Special Federal Aviation Regulation—

(a) The maximum zero fuel weight of the airplane must be established as an operating limitation and may not exceed 12,500 pounds; and

(b) The airworthiness certificate shall be endorsed "This airplane at weights in excess of 5,700 kg does not meet the airworthiness requirements of ICAO, as prescribed by Annex 8 of the Convention on International Civil Aviation."

5. *Exceptions.* For purposes of obtaining an amended or supplemental type certificate under section 1.(b) of this Special Federal Aviation Regulation, the following exceptions apply. All references in this section to specific sections of Parts 23 and 25 of this chapter are to those in effect on September 26, 1978 if no other date is given:

(a) Compliance with section 1 of Appendix A of Part 135 of the Federal Aviation Regulations is not required.

(b) Compliance may be shown with the applicable regulations incorporated in the type certificate in lieu of the requirements of Appendix A of Part 135 of the Federal Aviation Regulations for takeoff weights of 12,500 pounds or less, if the airplane was type certificated—

(1) Under FAR Part 23 in effect prior to Amendment 23-10 and the airplane is to be used only in FAR Part 91 operations;

(2) Before July 1, 1970, in the normal category with a passenger seating configuration, excluding any pilot seat, of 10 seats or more, and meets special conditions issued by the Administrator for airplanes intended for use in operations under FAR Part 135; or

(3) Before July 1, 1970, in the normal category with a passenger seating configuration, excluding any pilot seat, of 10 seats or more, and meets the additional airworthiness standards in Special Federal Aviation Regulation No. 23.

(c) In lieu of compliance with sections 7., 19.(b)(3), and 19.(c) of Appendix A of Part 135 of the Federal Aviation Regulations, comply with the following at takeoff weights in excess of 12,500 pounds:

*Landing*

(a) The landing distance must be determined for standard atmosphere at each weight, altitude, and wind within the operational limits established by the applicant in accordance with § 23.75(a) of this chapter effective March 30, 1967. Instead of a gliding approach specified

in § 23.75(a)(1), the landing may be preceded by a steady approach down to the 50-foot height at a gradient of descent not greater than 5.2 percent (3°) at a calibrated airspeed not less than 1.3 $V_{S1}$.

(*b*) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing, and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) In lieu of compliance with section 28 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with the following:

*Fatigue evaluation of flight structure.* Unless it is shown that the structure, operating stress levels, materials, and expected use are comparable from a fatigue standpoint to a similar design which has had substantial satifactory service experience, the strength, detail design, and the fabrication of those parts of the wing, wing carrythrough, vertical fin, horizortal stabilizer, and attaching structure whose failure would be catastrophic must be evaluted under either—

(*a*) A fatigue strength investigation in which the structure is shown by analysis, tests, or both, to be able to withstand the repeated loads of variable magnitude expected in service. Analysis alone is acceptable only when it is conservative and applied to simple structures; or

(*b*) A fail-safe strength investigation in which it is shown by analysis, tests, or both, that catastrophic failure of the structure is not probable after fatigue, or obvious partial failure, of a principal structural element, and that the remaining structure is able to withstand a static ultimate load factor of 75 percent of the critical limit load factor at $V_C$. These loads must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered.

(e) In lieu of compliance with section 32 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with the following:

*Doors and exits.* The airplane must meet the requirements of §§23.783 and 23.807 (a)(3), (b), and (c) of this chapter, and in addition the following requirements:

(*a*) Each cabin must have at least one easily accessible external door.

(*b*) There must be a means to lock and safeguard each external door against opening in flight (either inadvertently by persons or as a result of mechanical failure or failure of a single structural element). Each external door must be operable from both the inside and the outside, even though persons may be crowded against the door on the inside of the airplane. Inward opening doors may be used if there are means to prevent occupants from crowding against the door to an extent that would interfere with the opening of the door. The means of opening must be simple and obvious and must be arranged and marked so that it can be readily located and operated, even in darkness. Auxiliary locking devices may be used.

(*c*) Each external door must be reasonably free from jamming as a result of fuselage deformation in a minor crash.

(*d*) Each external door must be located where persons using it will not be endangered by the propellers when appropriate operating procedures are used.

(*e*) There must be a provision for direct visual inspection of the locking mechanism by crewmembers to determine whether external doors, for which the initial opening movement is outward (including passenger, crew, service, and cargo doors), are fully locked. In addition, there must be a visual means to signal to appropriate crewmembers when normally used external doors are closed and fully locked.

(*f*) Cargo and service doors not suitable for use as exits in an emergency need only meet paragraph (*e*) of section 5(*e*) of this regulation and be safeguarded against opening in flight as a result of mechanical failure or failure of a single structural element.

(*g*) The passenger entrance door must qualify as a floor level emergency exit. If an integral stair is installed at such a passenger entry door, the stair must be designed so that when subjected to the inertia forces specified in § 23.561 of this chapter, and following the collapse of one or more legs of the landing gear, it will not interfere to an extent that will reduce the effectiveness of emergency egress through the passenger entry door. Each additional required emergency exit except floor level exits must be located over the wing or must be provided with acceptable means to assist the occupants in descending to the ground. In addition to the passenger entrance door—

(1) For a total seating capacity of 15 or less, an emergency exit, as defined in § 23.807(b) of this chapter, is required on each side of the cabin;

(2) For a total seating capacity of 16 through 23, three emergency exits, as defined in § 23.807(b) of this chapter, are required with one on the same side as the door and two on the side opposite the door; and

(3) For a total seating capacity in excess of 23, the number of emergency exits and their kind and distribution must be approved by the Administrator.

(*h*) An evacuation demonstration must be conducted utilizing the maximum number of occupants for which certification is desired. It must be conducted under simulated night conditions utilizing only the emergency exits on the most critical side of the aircraft. The participants must be representative of average airline passengers with no prior practice or rehearsal for the demonstration. Evacuation must be completed within 90 seconds.

(*i*) Each emergency exit must be marked with the word "Exit" by a sign which has white letters 1 inch high on a red background 2 inches high, be self-illuminated or independently internally electrically illuminated, and have a minimum luminescence (brightness) of at least 160 microlamberts. The colors may be reversed if the passenger compartment illumination is essentially the same.

(*j*) Access to window type emergency exits may not be obstructed by seats or seat backs.

(*k*) The width of the main passenger aisle at any point between seats must equal or exceed the values in the following table:

| Total seating capacity | Minimum main passenger aisle width— | |
|---|---|---|
| | Less than 25 inches from floor | 25 inches and more from floor |
| 10 through 23 | 9 inches | 15 inches |
| over 23 | 15 inches | 20 inches |

(f) In lieu of compliance with Section 45 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with § 23.954 of this chapter.

(g) In lieu of compliance with Section 56 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with the following:

*Cowlings.* The airplane must be designed and constructed so that no fire originating in any engine compartment can enter, either through openings or by burn through, any other region where it would create additional hazards.

(h) In lieu of complaince with Section 57 of Appendix A of Part 135 of the Federal Aviation Regulations, comply with § 25.863 of this chapter.

6. *Additional requirements—general.* The additional requirements specified in sections 7 through 14 apply to the certification of airplanes pursuant to section 1.(b) of this Special Federal Aviation Regulation.

7. *Compartment interiors.*

(a) If smoking is to be prohibited, there must be a placard so stating, and if smoking is to be allowed—

(1) There must be an adequate number of self-contained removable ashtrays; and

(2) Where the crew compartment is separated from the passenger compartment, there must be at least one sign (using either letters or symbols) notifying all passengers when smoking is prohibited. Signs which notify when smoking is prohibited must—

(i) Be legible to each passenger seated in the passenger cabin under all probable lighting conditions; and

(ii) When illuminated, be so constructed that the crew can turn them on and off.

(b) Each disposal receptacle for towels, paper, or waste must be fully enclosed and constructed of at least fire resistant materials, and must contain fires likely to occur in it under normal use. The ability of the disposal receptacle to contain those fires under all probable conditions of wear, misalignment, and ventilation expected in service must be demonstrated by test. A placard containing the legible words "No Cigarette Disposal" must be located on or near each disposal receptacle door.

(c) Lavatories must have "No Smoking" or "No Smoking in Lavatory" placards located conspicuously on each side of the entry door, and self-contained removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if it can be seen from the cabin side of each lavatory door served. The placards must have red letters at least one-half inch high on a white background at least one inch high. (A "No smoking" symbol may be included on the placard).

(d) There must be at least one hand fire extinguisher conventiently located in the pilot compartment.

(e) There must be at least one hand fire extinguisher conventiently located in the passenger compartment.

8. *Landing gear.* Comply with §§ 25.721(a)(2), (b), and (c) of this chapter in effect on September 26, 1978.

9. *Fuel system components crashworthiness.* Comply with §§ 25.963(d) and 25.994 of this chapter in effect on September 26, 1978.

10. *Shutoff means.* Comply with § 23.1189 of this chapter in effect on September 26, 1978.

11. *Fire detector and extinguishing systems.*

(a) *Fire detector systems.*

(1) There must be a means which ensures the prompt detection of a fire in an engine compartment.

(2) Each fire detector must be constructed and installed to withstand the vibration, inertia, and other loads to which it may be subjected in operation.

(3) No fire detector may be affected by any oil, water, other fluids, or fumes that might be present.

(4) There must be means to allow the crew to check, in flight, the function of each fire detector electric circuit.

(5) Wiring and other components of each fire detector system in an engine compartment must be at least fire resistant.

(b) *Fire extinguishing systems.*

(1) Except for combustor, turbine, and tail pipe sections of turbine engine installations that contain lines or components carrying flammable fluids or gases for which it is shown that a fire originating in these sections can be controlled, there must be a fire extinguisher system serving each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used.

(3) The fire-extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

12. *Fire extinguishing agents.* Comply with § 25.1197 of this chapter in effect on September 26, 1978.

13. *Extinguishing agent containers.* Comply with § 25.1199 of this chapter in effect on September 26, 1978.

14. *Fire extinguishing system materials.* Comply with § 25.1201 of this chapter in effect on September 26, 1978.

15. *Expiration.* This Special Federal Aviation Regulation terminates on October 17, 1981, unless sooner rescinded or superseded.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

2. By adding a new § 91.58 to read as follows:

**§ 91.58 Materials for compartment interiors.**

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR NO. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds, unless within one year after issuance of the initial airworthiness certificate under that SFAR, the airplane meets the compartment interior requirements set forth in § 25.853(a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978.

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising § 135.169 by deleting the word "or" at the end of § 135.169(b)(3); by deleting the period at the end of § 135.169(b)(4) and inserting a semicolon in its place; by adding a new § 135.169(b)(5) and (b)(6) and by revising § 135.169(c)(2) to read as follows:

**§ 135.169 Additional airworthiness requirements.**

* * * * *

(b) * * *

(5) In the normal category and complies with section 1.(a) of Special Federal Aviation Regulation No. 41; or

(6) In the normal category and complies with section 1.(b) of Special Federal Aviation Regulation No. 41.

(c) * * *

(2) An airplane that complies with—

(i) Appendix A of this part provided that its passenger seating configuration, excluding pilot seats, does not exceed 19 seats; or

(ii) Special Federal Aviation Regulation No. 41.

4. By adding a new § 135.170 to read as follows:

**§ 135.170 Materials for compartment interiors.**

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds, unless within one year after issuance of the initial airworthiness certificate under that SFAR, the airplane meets the compartment interior requirements set forth in § 25.853 (a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978.

5. By amending § 135.399 to read as follows:

**§ 135.399 Small nontransport category airplane performance operating limitations.**

(a) No person may operate a reciprocating engine or turbopropeller-powered small airplane that is certificated under § 135.169(b) (2), (3), (4), (5), or (6) unless that person complies with the takeoff weight limitations in the approved Airplane Flight Manual or equivalent for operations under this part, and, if the airplane is certificated under § 135.169(b) (4) or (5) with the landing weight limitations in the Approved Airplane Flight Manual or equivalent for operations under this part.

(b) No person may operate an airplane that is certificated under § 135.169(b)(6) unless that person complies with the landing limitations prescribed in §§ 135.385 and 135.387 of this part. For purposes of this paragraph, §§ 135.385 and 135.387 are applicable to reciprocating and turbopropeller-powered small airplanes notwithstanding their stated applicability to turbine engine powered large transport category airplanes.

(Secs. 313 (a), 601, 603, and 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, and 1424); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to Raymond E. Ramakis, Safety Regulations Staff (AVS-24), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Issued in Washington, D.C., on September 7, 1979.

Langhorne Bond,

*Administrator.*

[FR Doc. 79-28703 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

[Docket No. 79-WE-27-AD; Amdt. 39-3561]

## Airworthiness Directives; Lockheed L-1011 Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD) which requires installation of an antifriction gasket on the flange of the pressure relief door in the C-1A cargo door assembly. The AD is necessary to assure the retention of the "fail-safe" operational capability of the pressure relief door which was established during type certification.

**DATES:** Effective September 24, 1979. Compliance schedule—As prescribed in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from:

Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Department 63-11, U33, B-1.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Kyle L. Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** The C-1A cargo door is an outward opening cargo door which is included in some of the customer configurations of the L-1011-385 series airplanes. The loss of the C-1A cargo door at operating altitudes could be catastrophic, consequently this door and its subassemblies and components has been type certificated on a "fail-safe" basis in 1974. The function of the pressure relief door, located in the approximate geometrical center of the C-1A cargo door, is to preclude the pressurization of the fuselage if the C-1A cargo door is not fully latched and locked. The pressure relief door type design of 1974 was based upon a "fail-safe" concept of total operational integrity when one of the four torsion springs, which rotate the door into a fully open position, is inoperative or missing. This "fail-safe" capability was validated by an FAA witnessed demonstration conducted during the type certification process of 1974.

Subsequently, Lockheed altered the type design of the pressure relief door torsion springs without conducting a new "fail-safe" operational capability demonstration. FAA post audit of the type design alteration included a demonstration of the pressure relief door operation with the altered torsion springs installed. This demonstration revealed a degradation in the operational capability of the pressure relief door with one of the four torsion springs inoperative or missing. As a result of this degradation in the "fail-safe" operational capability of the pressure relief door, Lockheed developed an antifriction gasket whose installation on the pressure relief door flange provides the full "fail-safe" operational capability. A successful demonstration of the pressure relief door "fail-safe" operational capability with the antifriction gasket installed was witnessed by FAA. Consequently, installation of the antifriction gasket is required for all L-1011-385-1, L-1011-385-1-14, and L-1011-385-1-15 airplanes configured with a C-1A cargo door. The pressure relief doors installed on Model L-1011-385-3 airplanes include the antifriction gaskets in its type design.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Lockheed-California Company. Applies to all L-1011-385-1, L-1011-385-1-14, and L-1011-385-1-15 airplanes certificated in all categories, configured with a C-1A cargo door.

Compliance required as indicated.

To assure the retention of "fail-safe" operational capability of the pressure relief door, accomplish the following:

(a) Within the next 300 hours time in service, unless already accomplished, install the antifriction gasket on the flange of the pressure relief door in accordance with the FAA approved Lockheed-California Company Service Bulletin 093-52-133 dated May 30, 1979.

(b) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to operate airplanes to a base for the accomplishment of modification required by this AD.

(C) Alternate modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective September 24, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89).

Issued in Los Angeles, California on September 6, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28687 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

[Docket No. 79-EA-43; Amdt. 39-3560]

## Airworthiness Directives; Piper Aircraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment issues a new airworthiness directive applicable to Piper PA-31 type airplanes which requires operational restrictions, a replacement and/or relocation electroluminescent panel power supply inverter. It appears that there has been shorting of the inverter causing smoke in the cockpit. The inverter will be replaced and relocated.

**EFFECTIVE DATE:** September 25, 1979. Compliance is required as set forth in the AD.

**ADDRESSES:** Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

**FOR FURTHER INFORMATION CONTACT:** W. J. White, Systems & Equipment Section, AEA-213, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-3372.

**SUPPLEMENTARY INFORMATION:** Since this deficiency can exist in other airplanes of similar type design, an airworthiness directive is being issued requiring the replacement and relocation of the inverters. In view of the air safety problem, notice and public procedure hereon are impractical and the amendment may be made effective in less than 60 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Piper: Applies to Model PA-31T1, Serial Nos. 31T-7804001 to 31T-7904016 inclusive, and PA31T1, Serial Nos. 31T-7400002 to 31T-7920036, inclusive.

To prevent possible hazards in flight caused by a shorting of the electroluminescent panel inverters creating smoke in the cockpit.

(a) Within the next one hundred hours in service or at the next scheduled inspection, whichever occurs first, comply with the instructions of Piper Service Bulletin No. 640 dated June 22, 1979, for the replacement and/or relocation of the electroluminescent panel power supply inverter.

(b) Upon request with substantiating data submitted through an FAA Maintenance Inspector, the compliance time specified in this AD may be adjusted by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

*Effective date:* This amendment is effective September 25, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on September 6, 1979.

Brian J. Vincent,

*Acting Director, Eastern Region.*

[FR Doc. 79-28688 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 79-WE-23-AD; Amdt. 39-3558]

## Airworthiness Directives; Cessna Model 210 Airplanes Modified per STC SA3835WE

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to certain Cessna Model 210 airplanes incorporating Symbolic Displays, Inc. fuel flow indicating systems per STC SA3835WE. This AD is required to prevent possible fuel leakage and associated fire hazard which may result in permanent subject modification.

**DATES:** Effective September 17, 1979.

Compliance schedule—within 25 hours' time-in-service, or thirty (30) days from the effective date of this AD, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** The FAA issued STC SA3835WE on January 19, 1979 authorizing modification of certain Cessna Model 210 airplanes. The authorized modification involved the installation of the Symbolic Displays, Inc. fuel flow indicating system. Subsequent to the original issuance of STC SA3835WE, the FAA has determined that a potential for fuel leakage existed with the originally specified installation. The STC was therefore revised on June 12, 1979 substituting a hose assembly for the originally specified NAS 424-4 coupling, with associated minor fuel line re-routing.

The purpose of this AD is to make mandatory the removal of the fuel leakage source which was part of the original design data of STC SA3835WE.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Cessna Aircraft Company: Applies to Cessna Model 210L, Model T210L, Serial Numbers 21061040 and subsequent, Model 210M, Model T210M and Model P210N series airplanes modified to incorporate Symbolic Displays, Inc. fuel flow indicating system per STC SA3835WE.

Compliance required within 25 hours' time-in-service or thirty (30) days from the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent a possible fuel leak caused by the installation of Symbolic Displays, Inc. fuel flow indicating system per STC SA3835WE accomplish the following:

(a) Inspect the fuel flow transducer installation on the upper left side of the engine near the fuel distributor manifold.

(b) If a 4 inch long flexible hose (Aeroquip P/N AE7010001E0040 or Stratoflex P/N 11D417-4S-0040) is installed between the transducer and the fuel distributor, no further action is required per this AD.

(c) If an NAS 424-4 coupling is installed between the fuel flow transducer and the fuel distributor, remove and replace the coupling with hose assembly Aeroquip Part Number AE7010001E0040 or hose assembly Part Number 111D417-4S-0040 (Stratoflex).

Note.—Symbolic Displays, Inc. Service Information Bulletin No. 72 dated June 15, 1979 and Installation Diagram Drawing No. 204724, Revision "B," pertain to this matter.

(d) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective September 17, 1979.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89]

Issued in Los Angeles, Calif. on August 31, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28701 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 78-WE-26-AD; Amdt. 39-3554]

## Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) applicable to McDonnell Douglas Model DC-9 airplanes by specifying revised modification instructions for certain

elements of the door lock crank assembly. The amendment is needed because the FAA has determined that the modification instructions as originally specified may in some cases be inadequate to resolve the door operating mechanism rigging problem.

**DATE:** Effective September 13, 1979.

**ADDRESSES:** The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director, Publications and Training, C1–750 (54–60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

**SUPPLEMENTARY INFORMATION:** This amendment amends Amendment 39–3472, (44 FR 29434), AD 79–10–13 which requires inspection, rework, and replacement, as necessary, of the forward passenger entry door lock mechanism crank assembly on certain McDonnell Douglas Model DC–9 series airplanes. After issuing Amendment 39–3472, the FAA has determined that modification instructions for chamfering the P/N 4918613–13 clevis and P/N 4918613–11 crank specified in McDonnell Douglas S.B. 52–111 may in some cases be inadequate to provide clearance in rigging the door operating mechanism. Therefore, the AD is being amended to provide for additional metal removal, (chamfering), by specifying revised dimensions contained in Revision 1 of S.B. 52–111.

Since this amendment provides relief and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Adminstrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39–3472 to read in pertinent part as follows:

* * * * *

(c) * * *, in accordance with the instructions contained in Paragraph 2 of McDonnell Douglas Service Bulletin 52–111, Revision 1, dated May 31, 1979.

(c)(1)(ii) * * *, in accordance with the instructions contained in Paragraph 2 of McDonnell Douglas Service Bulletin 52–111, Revision 1, dated May 31, 1979; or,

(c)(1)(iii) * * *, in accordance with the instructions contained in Paragraph 2 of McDonnell Douglas Service Bulletin 52–111, Revision 1, dated May 31, 1979.

* * * * *

Amendment 39–3472 became effective June 20, 1979.

This amendment becomes effective September 13, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.)

Issued in Los Angeles, California on August 28, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79–28698 Filed 9–14–79; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 77–WE–26–Ad; Amdt. 39–3555]**

## Airworthness Directives; McDonnell Douglas Model DC–9 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes a currently effective airworthiness directive (AD) which requires inspection, and repair if necessary, of the elevator spar of DC–9 airplanes.

This amendment makes mandatory the X-ray inspections set out in McDonnell Douglas Service Bulletin 55–28, Revision 4. This AD is needed because subsequent knowledge has indicated that the inspection procedures specified in the original AD are not completely adequate to the safety need.

**DATES:** Effective September 13, 1979.

Compliance schedule—As prescribed in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director, Publications and Training, C1–750(54–60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

**SUPPLEMENTARY INFORMATION:** AD 78–01–12 requires inspection for cracks and repair or replacement of the elevator spar on McDonnell Douglas Model DC–9 series airplanes. Subsequent to the issuance of AD 78–01–12, a notice was issued in the Federal Register at 44FR5674 which proposed to amend the existing AD by requiring a repetitive inspection interval of 1800 hours' time-in-service on certain elevator spar repairs. No adverse comments on this proposal were received, and the FAA was in the process of preparing the amendment, when additional information relative to the adequacy of the inspection techniques specified in the original AD was received. Specifically the FAA learned that cracks in the root section of the elevator spar might go undetected using X-ray techniques specified in the cited McDonnell Douglas Service Bulletin, Revision 3. Revision 4 of Service Bulletin 55–28 contains adequate instructions for detection of these cracks. Therefore, the FAA is superseding AD 78–01–12 with a new amendment requiring the X-ray inspection methods of Revision 4 of Service Bulletin 55–28 and incorporating the provisions of the notice of proposed rule-making.

Since the revised inspection techniques are required at the next regularly scheduled repetitive inspection required by the superseded AD, no additional burden is imposed on any person. Notice and public procedure hereon are therefore unnecessary and good cause exists for making this amendment effective in less than thirty (30) days.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Adminstrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to certain Model DC–9 series airplanes, certificated in all categories, including Military Type C–9A, C–9B and VC–9C, serial numbers corresponding to fuselage numbers 1 through 839 as identified in McDonnell Douglas Service Bulletin 55–28, Revision 4, dated May 18, 1979.

Compliance required within the next 3400 hours' time-in-service unless already accomplished within the past 200 hours' time-in-service, and thereafter at intervals not to exceed 3600 hours' time-in-service, on all airplanes with over 5000 hours' time-in-service as of, and after, February 13, 1978. Accomplishment of superseded AD 78-01-12 may be credited as accomplishment of this AD until the effective date of this AD.

(a) Perform an X-ray inspection of the elevator spars, P/N 9918450-1 or -501 in accordance with instructions contained in paragraph 2 of McDonnell Douglas DC-9 Service Bulletin 55-28, Revision 4, dated May 18, 1979.

(b) Cracked parts found during any of the inspections of paragraph (a) which do not exceed the crack limits and McDonnell Douglas DC-9 Service Bulletin 55-28, Revision 4, dated May 18, 1979 may be continued in service. However, in addition to the 3600 hour repetitive general inspection requirements of paragraph (a), the area 12 inches inboard and outboard of all cracks must be X-ray or dye penetrant inspected at intervals not to exceed the following:

(1) Length of longest crack up to 2 inches—800 hours' time-in-service.

(2) Length of longest crack between 2 and 4 inches—400 hours' time-in-service.

(c) If cracks are found during any reinspections of paragraphs (a) or (b) which exceed the crack limits of McDonnell Douglas DC-9 Service Bulletin 55-28, Revision 4, dated May 18, 1979, the cracked spar must be repaired or replaced before further flight. If the cracked spar is repaired per McDonnell Douglas Service Sketch 27378, the inspection procedures in paragraph (a) of this AD must be accomplished within 1800 hour' time-in-service after the repair and at intervals of 1800 hours' time-in-service thereafter.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(e) If the original 7075-T651 spars (P/N 9918450-1 or -501) are replaced with 7075-T7351 spars (P/N 9918450-503), the inspection requirements of this AD will not apply to that airplane.

(f) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(g) Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region may adjust the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This supersedes Amendment 39-3119.

Amendment 39-3119 became effective February 13, 1978.

This amendment becomes effective September 13, 1979.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89.]

Issued in Los Angeles, California on August 28, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28699 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 79-WE-10-AD; Amdt. 39-3557]

## Airworthiness Directives; McDonnell Douglas DC-10 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice amends a currently effective airworthiness directive (AD) which requires repetitive inspections of the Model DC-10 wing mounted pylons. This AD is required to provide clarification of certain inspection requirements and, in addition, adds a specific non-destructive testing inspection requirement.

**DATES:** Effective September 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** This amendment amends Amendment 39-3513, (44 FR 45375), AD 79-15-03 which currently requires repetitive and special inspections of wing mounted engine pylons on McDonnell Douglas Model DC-10 series airplanes.

After the issuance of Amendment 39-3513, the FAA received several requests for clarification of the special inspection requirements of paragraph (g) of the AD. In addition, a procedure for non-destructive testing of the titanium upper forward spherical bearing plug has been developed, which provides a higher level of confidence in crack detection capability.

Therefore, the FAA is amending Amendment 39-3513 by the addition of clarifying limitations to the list of special inspection conditions and by the addition of a non-destructive testing requirement to the titanium upper forward spherical bearing plug inspection requirements of paragraph (m) of the AD.

Since the amendment proposed is clarifying in nature and involves a situation that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-3513, (44 FR 45375), AD 79-15-03, paragraphs (g) and (m) to read in pertinent part as follows:

* * * * *

(g) Inspect pylon for structural integrity * * *.

c. Engine vibration which would require engine removal, and/or critical engine failure.

e. Compressor stalls requiring engine removal.

(m) After each installation of pylons with titanium * * *.

(3) Remove and retain through bolt, nut and washers and perform a detailed visual inspection of the through bore of the plug body (near the nut end of the plug), by using a borescope or other appropriate optical aids. No cracks or separations are permitted.

(4) Perform an ultrasonic inspection of the plug body adjacent to the through bore for cracks particularly near the nut end. No cracks or separations are permitted.

(5) Remove all traces of couplant and reassemble per DC-10 maintenance manual. Tighten LH7461T-144 nut to a torque value of 500-600 inch-pounds.

(6) Torque stripe nut to bolt and revert to repetitive inspection interval as prescribed in this AD.

* * * * *

Amendment 39-3513 became effective July 13, 1979.

This amendment becomes effective September 17, 1979.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89]

Issued in Los Angeles, California on September 4, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28702 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 79-EA-17]

## Alteration of Control Zone; New York, N.Y. (J.F.K. International Airport)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the New York, N.Y. (J.F.K. International

Airport) Control Zone to increase the zone. The additional control zone airspace would permit the United States Coast Guard (USCG) search and rescue helicopters and New York City Police Department (NYPD) helicopters to depart and arrive CGAS Brooklyn Airport under Special Visual Flight Rules (VFR) meteorological conditions.

**EFFECTIVE DATE:** 0901 GMT November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

**SUPPLEMENTARY INFORMATION:** The purpose of this amendment to Subpart F of the Federal Aviation Regulations (14 CFR Part 71) is to alter a control zone. On page 36199 of the Federal Register for June 21, 1979, the FAA published a proposed amendment to designate the subject transition area. Interested parties were given time in which to submit comments. No objections were received.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT November 29, 1979, as published.

(Sec. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Issued in Jamaica, New York, on August 30, 1979.

Murray E. Smith,

*Director, Eastern Region.*

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the New York, N.Y. (J.F.K. International Airport) Control Zone as follows:

In the text, deleted "Within a 5-mile radius of the center, 40°38'25" N., 73°46'41" W., of John F. Kennedy International Airport," and substitute therefor, "Within a 5-mile radius of the center, 40°38'25" N., 73°46'41" W., of John F. Kennedy Airport; within a 3-mile radius of the center 40°35'30" N., 73°53'30" W." of CGAs Brooklyn Airport, Brooklyn, N.Y.

[FR Doc. 79-28690 filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 79-EA-8]**

## Alteration of Transition Area; Cumberland, Md.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the Cumberland, Md., Transition Area, over Cumberland Municipal Airport, Cumberland, Md. This alteration will provide protection to aircraft executing the new instrument approach based on the localizer and distance measuring equipment for Runway 23, which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

**EFFECTIVE DATE:** 0901 GMT November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

**SUPPLEMENTARY INFORMATION:** The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter a transition area. The rule resulted from the development of a new instrument approach for the airport. On page 18042 of the Federal Register for March 26, 1979, the FAA published a proposed amendment to alter the subject transition area. Interested parties were given time in which to submit comments. No objections were received.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT November 29, 1979, as published.

(Sec. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Issued in Jamaica, New York, on August 30, 1979.

Murray E. Smith,

*Director, Eastern Region.*

1. Amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Cumberland, Md., 700-foot floor transition area as follows:

In the text, delete "extending from the 8.5 mile radius area to 11.5 miles north of the RBN." and substitute therefor, "extending from the 8.5 mile radius area to 11.5 miles north of the RBM; within 3.5 miles each side of the Cumberland Municipal Airport localizer northeast course extending from the 8.5 mile radius area to 18 miles northeast of the localizer."

[FR Doc. 79-28693 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 78-EA-114]**

## Alteration of Transition Area; Ogdensburg, N.Y.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the Ogdensburg, N.Y., Transition Area, over Ogdensburg International Airport, Ogdensburg, N.Y. This alteration is required due to development of a new LOC RWY 27 instrument approach procedure. The instrument approach procedure requires a widening of the transition area extension to protect aircraft utilizing the instrument approach.

**EFFECTIVE DATE:** 0901 GMT November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Rulemaking was published in the Federal Register on Monday, January 29, 1979, so as to alter the subject transition area. Interested parties were given time in which to submit comments. No objections were received.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT November 29, 1979, as published.

(Secs. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Issued in Jamaica, New York, on August 30, 1979.

Murray E. Smith,

*Director, Eastern Region.*

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by

amending the description of the Ogdensburg, N.Y., 700-foot floor transition area as follows:

a. Delete, "within 3.5 miles each side of a 075° bearing from the Ogdensburg RBN, (44°41'30" N., 75°24'25" W.), extending from the 5-mile radius area to 11.5 miles east of the RBN."

b. Following, "Ogdensburg International Airport, Ogdensburg, N.Y.," insert, "; within 4.5 miles each side of a 075° bearing from the Ogdensburg RBN (44°41'30" N., 75°24'25" W.) extending from the RBN to 11.5 miles east of the RBN,"

[FR Doc. 79-28692 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 79-ASW-24]

## Designation of Transition Area: Socorro, N. Mex.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of the action being taken is to designate a transition area at Socorro, NM. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Socorro Municipal Airport. The circumstance which created the need for the action is the establishment of a nondirectional radio beacon (NDB) 5 miles north of the airport. Coincident with this action, the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

**EFFECTIVE DATE:** November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Manuel R. Hugonnett, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 624-4911, extension 302.

**SUPPLEMENTARY INFORMATION:**

### History

On July 12, 1979, a notice of proposed rule making was published in the Federal Register (44 FR 40652) stating that the Federal Aviation Administration proposed to designate a transition area at Socorro, NM. Interested persons were invited to participate in this rule making proceeding by submitting comments on the proposal to the Federal Aviation Administration. No objections were received to the proposal. Except for editorial changes this amendment is that proposed in the notice.

### The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) designates the Socorro, NM, transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the Socorro Municipal Airport.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 (71.181) of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 GMT, November 29, 1979, by adding the Socorro, NM, transition area as follows:

Socorro, N. Mex.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the center of the Socorro Municipal Airport (latitude 34°01'17.7" N., longitude 106°53'58.7" W.), excluding airspace west of longitude 107°00'00" W.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Fort Worth, Texas, on August 31, 1979.

Henry N. Stewart,

*Acting Director, Southwest Region.*

[FR Doc. 79-28691 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 79-EA-14]

## Correction to Docket; Rochester, N.Y. Transition Area and Control Zone

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Final rule.

**SUMMARY:** This amendment corrects the subject docket which altered the Rochester, N.Y. Transition Area and Control Zone. This amendment will correct only the transition area so as to delete reference to the Ledgedale Airpark and the exclusion of the Rochester, N.Y. Transition Area.

**EFFECTIVE DATE:** Upon publication in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Airspace Docket No. 79-EA-14 is amended, effective upon publication in the Federal Register, as follows:

1. In Item 2, delete all after words "west of the VORTAC."

Section 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(c)); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.

Issued in Jamaica, New York, on August 30, 1979.

Murray E. Smith,

*Director, Eastern Region.*

[FR Doc. 79-28700 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 79-SW-18]

## Alteration of Victor Airways

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment redesignates alternate airway V-163W between Brownsville, Tex., and Corpus Christi, Tex., as V-70. This alteration is necessary in order to simplify air traffic control instructions to foreign pilots. On occasion, language differences and similar sounding airways can be misunderstood by some foreign pilots, thereby creating additional controller workload.

**EFFECTIVE DATE:** November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

**SUPPLEMENTARY INFORMATION:**

### History

On July 26, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to rename V-163W between Brownsville, Tex., and Corpus Christi, Tex., as V-70. There have been incidents where foreign pilots

have been cleared from Brownsville via V–163W and the pilots proceeded via V–163. Similar sounding airways apparently cause the confusion. This action redesignates V–163W between Brownsville and Corpus Christi as V–70. This amendment is the same as that proposed in the notice except the radials describing V–163W and V–70 were not correct and are redescribed in this final rule. Subpart C of Part 71 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1979, (44 FR 307). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) renames V–163W between Brownsville, Tex., and Corpus Christi, Tex., V–70. This change will end the route confusion experienced by foreign pilots due to similar sounding airways. By renaming V–163W, "V–70," there will be no doubt as to the route segment the foreign pilot will follow when given an air traffic clearance. This action reduces controller workload, increases safety and aids flight planning.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 GMT, November 29, 1979, as follows:

Under V–163 "via Brownsville, Tex.; INT of Brownsville 358° and Corpus Christi, Tex., 178° radials;" is deleted and "Brownsville, Tex., 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline), Corpus Christi, Tex.;" is substituted therefor.

Under V–70 "From Corpus Christi, Tex., via" is deleted and "From Brownsville, Tex., via INT Brownsville 338° and Corpus Christi, Tex., 193° radials; Corpus Christi," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 7, 1979.

William E. Broadwater,

*Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-28616 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Parts 71 and 75

[Airspace Docket No. 79-WA-10]

## Alteration of Jet Routes—Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** In a rule published in the Federal Register of August 13, 1979, Vol. 44, page 47326, that amended the description of several jet routes beause the Ontario, Calif., VORTAC was renamed "Paradise." The low altitude compulsory reporting point "Ontario, Calif." was inadvertently omitted from the name change. This action corrects that omission.

**EFFECTIVE DATE:** October 4, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lewis W. Still, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

**SUPPLEMENTARY INFORMATION:** Federal Register Document 79–24814 was published on August 13, 1979 (44 FR 47326) and amended the description of eight jet routes because the Ontario, Calif., VORTAC was renamed "Paradise" with an effective date of October 4, 1979. Inadvertently, the Ontario, Calif., low altitude compulsory reporting point which is also affected by the name change was omitted. Action is taken herein to correct that omission. Since this amendment is editorial in nature, it is a minor matter on which the public would have no particular desire to comment, notice and public procedure thereon are unnecessary.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Register Document 79–24814 as published on August 13, 1979, on page 47326, is amended as follows:

Under § 71.203 Domestic low altitude reporting points "Ontario, Calif." is deleted and "Paradise, Calif." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington D.C., on September 5, 1979.

William E. Broadwater,

*Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-28618 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 73

[Airspace Docket No. 79-WE-11]

## Alteration of Restricted Area; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** In a rule published in the Federal Register on August 13, 1979, Vol. 44, page 47325, under the section describing R–2501N, one set of coordinates in the fifth line was inadvertently omitted. This action corrects that error and thereby conforms to the area currently charted as R–2501N.

**EFFECTIVE DATE:** October 4, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lewis W. Still, Airspace Regulations Branch (ATT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

**SUPPLEMENTARY INFORMATION:** Federal Register Document 79–24815 was published on August 13, 1979, (44 FR 47325) and altered Restricted Area R–2501 by changing the internal boundaries of its four subdivisions. The existing lateral and vertical limits of R–2501 remained the same. Inadvertently, one set of coordinates in R–2501N was omitted and action is taken herein to correct that omission. Subpart B of Part 73 of the Federal Aviation Regulations was published in the Federal Register on January 2, 1979, (44 FR 675). Since this correction is a minor matter upon which the public would have no particular

desire to comment, I find that notice and public procedure are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Register Document 79-24815 as published in the Federal Register on August 13, 1979, page 47325 in the fifth line, describing R-2501N, Bullion Mountains North, Calif., after coordinates 34°41'15" N.; 116°04'30" W.; add:

"34°41'00" N.; 116°03'00" W.;" all after remains the same.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 7, 1979.

William E. Broadwater,

*Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-28615 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 73

[Airspace Docket No. 79-GL-2]

## Alteration of Restricted Area; Crane, Indiana

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters Restricted Area R-3404, Crane, Ind., by (1) increasing the restricted area ceiling from 1,800 feet MSL to 2,500 feet MSL, (2) changing the controlling agency to Federal Aviation Administration, Indianapolis Air Route Traffic Control Center (ARTCC), and (3) reducing the time of designation. This action is necessary because recently developed technical data indicate the higher ceiling is required to provide protection to overflying aircraft from demolition activities conducted within the restricted area.

**EFFECTIVE DATE:** November 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

**SUPPLEMENTARY INFORMATION:**

History

On July 19, 1979, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter Restricted Area R-3404, Crane, Ind., by (1) increasing the ceiling to 2,500 feet MSL, (2) changing the controlling agency, and (3) reducing the time of designation, (44 FR 42228). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received and this amendment is that proposed in the notice. Section 73.34 was republished in the Federal Register on January 2, 1979, (44 FR 691).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) alters Restricted Area R-3404, Crane, Ind., by increasing the ceiling from 1,800 feet MSL to 2,500 feet MSL and changing the controlling agency to Indianapolis ARTCC because of ATC considerations. Additionally, the time of designation is reduced with a provision for activation by NOTAM. This reduction restores airspace to public use a greater portion of the year. The increased ceiling is necessary to provide protection to overflying aircraft from demolition activities conducted within the restricted area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 73.34 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 691) is amended, effective 0901 GMT, November 29, 1979, as follows:

Under R-3404, Crane, Ind.

1. Designated altitudes. "1,800 feet MSL." is deleted and "2,500 feet MSL." is substituted therefor.

2. Controlling agency. "Terre Haute Flight Service Station." is deleted and "Indianapolis ARTC Center." is substituted therefor.

3. Time of designation. "Sunrise to sunset." is deleted and "Sunrise to sunset daily from May 1 through and including November 1. Other times by NOTAM 24 hours in advance." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on September 11, 1979.

William E. Broadwater,

*Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-28686 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

## 23 CFR Part 630

[FHWA Docket No. 79-31]

## Traffic Safety in Highway and Street Work Zones; Separation of Opposing Traffic

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Emergency final rule.

**SUMMARY:** The Federal Highway Administration (FHWA) has determined that an alarming number of fatal traffic accidents is occurring where two-way traffic is maintained on one roadway of a normally divided highway. This rule amends existing procedures to require more stringent control measures to reduce the incidence of such accidents on highway construction projects funded by FHWA.

**DATES:** This amendment is effective September 17, 1979. Comments must be received on or before November 16, 1979.

**ADDRESS:** Anyone wishing to submit written comments may do so. Comments should be sent, preferably in triplicate, to FHWA Docket No. 79-31, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth L. Ziems, Office of Highway Operations, 202-426-4848, or Mr. Stanley H. Abramson, Office of the Chief Counsel, 202-426-0761; Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590.

**SUPPLEMENTARY INFORMATION:** The FHWA issued a final rule on traffic safety in highway and street work zones on October 12, 1978 (43 FR 47138). The purpose of the rule was to assure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid highway construction projects (23 CFR 630.1002).

In recent months, FHWA officials have received continuing evidence of severe head-on accidents on divided highways which have been reduced to two-lane, two-way operations because of construction or maintenance work. Over the past 16 months, some 17 major accidents in such highway work zones have been reported to FHWA. These accidents resulted in 44 traffic fatalities and 29 injuries. The total number of such accidents is not known, because detailed information on all accidents is not reported at the Federal level. The accidents which have been reported have occurred on federally-assisted highway projects as well as projects undertaken without Federal funds.

The FHWA has determined that more stringent control measures are required in order to reduce the incidence of such accidents. Permitting two-way traffic on one roadway of a normally divided highway is not considered appropriate unless other methods of traffic control (e.g., one-way operation or detours) are determined to be infeasible. Where two-way traffic must be maintained, the most effective control measure is to physically separate the opposing traffic lanes. This separation is accomplished either with positive barriers or with appropriate devices to provide delineation and channelization.

Existing requirements for all Federal-aid highway construction projects call for the development of a traffic control plan (TCP) for each project (23 CFR 630.1010(a)). This amendment requires the TCP to include provisions for the separation of opposing traffic lanes whenever two-way traffic must be maintained on one roadway of a normally divided highway. This two-way traffic situation will be permitted only when other traffic control methods are infeasible.

More specifically, where two-way traffic must be maintained, § 630.1010(a)(5)(i) now requires opposing traffic to be separated either with concrete "safety-shape" barriers or with drums, cones, or vertical panels throughout the length of the two-way operation, except for transition zones, where the concrete barriers are to be used in all cases. The use of striping and signs without barriers or appropriate delineation devices is prohibited. A limited provision for exceptions is provided (§ 630.1010(a)(5)(ii)).

Although this rule does not apply retroactively to previously approved projects, the States will be urged to revise ongoing projects in accordance with the new requirements. The States are also encouraged to apply these requirements to non-Federal-aid projects.

This amendment is being issued as an emergency final rule without prior opportunity for public notice and comment and without a 30-day delay in effective date in accordance with the criteria established by the Department of Transportation (DOT) pursuant to Executive Order (E.O.) 12044. The reasons for issuance on an emergency basis are the alarming number of traffic fatalities in work zones which have been reported to FHWA and the need to take immediate action to reduce the incidence of such accidents. Although a detailed evaluation has not been made, it is anticipated that the costs of implementing this rule will be far outweighed by the benefits resulting from the prevention of traffic fatalities and serious accidents.

Although this amendment is being issued in final form and is effective September 17, 1979, comments are requested from all interested parties. Comments received will be considered by FHWA in evaluating the effectiveness of the amendment and in determining the need for future revisions.

**§ 630.1010 [Amended]**

In consideration of the foregoing, Subpart J of Part 630, Chapter I, Title 23, Code of Federal regulations, is amended by adding a new Subparagraph (5) to § 630.1010(a) to read as follows:

(a) * * *

(5) The TCP shall include provisions for the separation of opposing traffic whenever two-way traffic must be maintained on one roadway of a normally divided highway. Two-way operation on one roadway of a normally divided highway shall be permitted only when other methods of traffic control are determined infeasible.

(i) Where two-way traffic must be maintained on one roadway of a normally divided highway, opposing traffic shall be separated either with positive barriers (concrete safety-shape or approved alternate) or with drums, cones, or vertical panels throughout the length of two-way operation, except for transition zones, where positive barriers shall be used. Where terminal sections of temporary positive barriers are not tied to an existing structure, the barriers shall be flared or fitted with impact attenuation devices. The use of striping and complementary signing, by themselves, is prohibited.

(ii) An exception to the provisions of paragraph (a)(5)(i) of this section may be granted only when it has been demonstrated that the use of positive barriers or delineation and channelization devices is not feasible or practical. An exception shall not be granted where drivers entering the two-way operation cannot see the transition back to a one-way operation. Each exception granted by FHWA will require the written approval of the FHWA Division Administrator.

Note.—The Federal Highway Administrator has determined that this document contains an emergency regulation according to the criteria established by DOT pursuant to E.O. 12044. A regulatory evaluation is being prepared and will be made available for inspection in the public docket. Copies may be obtained by contacting Mr. Kenneth L. Ziems, Office of Highway Operations, at the address specified above.

(23 U.S.C. 109(b), 109(d), 315, and 402(a); 49 CFR 1.48(b))

Issued on: September 12, 1979.

Karl S. Bowers,

*Federal Highway Administrator.*

[FR Doc. 79-28793 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Ch. VII

## Surface Mining Reclamation and Enforcement Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

**ACTION:** Final rule; notice to confirm clearance of recordkeeping and reporting requirements.

**SUMMARY:** This notice confirms clearance by the U.S. General Accounting Office (GAO) of permanent program regulations requiring collection, submission or retention of information issued by the Office of Surface Mining Reclamation and Enforcement (OSM), in addition to those previously confirmed. OSM amends its permanent regulatory program rules to reflect this clearance and announces the effective dates for those sections of the rules for which GAO clearance was obtained.

**EFFECTIVE DATE:** Effective dates for the approved provisions are set forth below

in SUPPLEMENTARY INFORMATION under "Announcement of Effective Dates."

**ADDRESSES:**

Assistant Director, Management and Budget, Office of Surface Mining Reclamation and Enforcement, Room 240, 1951 Constitution Avenue, NW., Washington, D.C. 20240.
Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.
Administrative Records, Office of Surface Mining Reclamation and Enforcement, Room 135, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**
Joan Shaw, 202-343-5447.

**SUPPLEMENTARY INFORMATION:** On March 13, 1979, the Secretary of the Interior promulgated regulations at Title 30 Code of Federal Regulations, Chapter VII (44 FR 15312-15363) under the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.* Those regulations which required collection, submission or retention of information, were promulgated subject to review and clearance by the GAO, pursuant to 44 U.S.C. 3512.

OSM published notice of GAO clearance of certain sections of those regulations in the Federal Register on June 18, 1979 (44 FR 35192-35193). In that notice, OSM listed additional sections of the regulations that had been identified by commenters and GAO staff and confirmed by OSM, during GAO's review, as containing either reporting or recordkeeping requirements.

The GAO solicited public comments on the additional sections by public notice in the Federal Register on June 14, 1979 (44 FR 34198-34199).

In addition, §§ 786.21, 805.14(b) and 807.11(a) were identified in the Federal Register notice of June 18, 1979 as three sections not cleared pending revision. OSM revised these three sections by notice in the Federal Register on August 24, 1979 (44 FR 49686).

GAO clearance was given July 23, 1979, for the sections for which public comment was solicited in the June 18, 1979 notice. GAO clearance was given August 23, 1979, for the three sections to be revised.

OSM is restating paragraphs of its June 18, 1979 clearance notice that relate to 30 CFR Parts 776, 779, 784, 785, 786, 805, 807, 816, 817, and 843 to include the provisions cleared by GAO on July 23 and August 23. The complete list of approved clearances follows:

The reporting requirements contained in 30 CFR 776.11, 776.12, 776.113(b) and 776.17(b) have been approved by the U.S. General Accounting Office under number B-190462 (RO603).

The reporting requirements contained in 30 CFR 779.11, 779.12, 779.13. 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, and 779.27 have been approved by the U.S. General Accounting Office under number B-190462 (RO605).

The reporting requirements contained in 30 CFR 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.22, 784.23, 784.24, 784.25, and 784.26 have been approved by the U.S. General Accounting Office under number B-190462 (RO609).

The reporting and recordkeeping requirements contained in 30 CFR 785.13 (e), (f), (g), and (h); 785.14; 785.15; 785.16; 785.17(b); 785.18(c), 785.19; 785.20; 785.21; and 785.22 have been approved by the U.S. General Accounting Office under number B-190462 (RO610).

The reporting and recordkeeping requirements contained in 30 CFR 786.11 (a), (b), (c), and (d); 786.14(b); 786.15; 786.17(c); 786.19; 786.21; 786.23 (c) and (d); and 786.25(b) (2) and (4) have been approved by the U.S. General Accounting Office under number B-190462 (RO611).

The reporting requirement contained in 30 CFR 805.14(b) has been approved by the U.S. General Accounting Office under number B-190462 (RO614).

The reporting requirements contained in 30 CFR 807.11(a) and the recordkeeping requirements contained in 807.11(e)(4), and 807.11(f), and 807.11(h)(ii) have been approved by the U.S. General Accounting Office under number B-190462 (RO616).

The reporting and recordkeeping requirements contained in 30 CFR 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.49(i), 816.52(a), 816.52(b)(1) (ii) and (iii), 816.53(a), 816.62, 816.64, 816.65(a)(2)(iii), 816.67, 816.68 , 816.71(j), 816.82(a)(4), 816.82(b), 816.87, 816.91(b), 816.95, 816.116, 816.117(b)(4), 816.117(c) (1) and (3), 816.131(b), 816.133(c) (1) through (4), 816.133(c) (8) and (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1) and 816.163(d) have been approved by the U.S. General Accounting Office under number B-190462 (RO618).

The reporting and recordkeeping requirements contained in 30 CFR 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.49(i), 817.52(a), 817.52(b)(1) (ii) and (iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.68, 817.71(j), 817.82(a)(4), 817.82(b), 817.87, 817.91(b), 817.95, 817.116, 817.117(b)(4), 817.117(c) (1) and (3), 817.131(b), 817.131(c) (1) through (4), 817.133(c) (8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1), and 817.163(d) have been approved by the U.S. General Accounting Office under number B-190462 (R0619).

The reporting requirements contained in 30 CFR 843.14(c) and 843.16 have been approved by the U.S. General Accounting Office under number B-190462 (R0624).

Burden estimates and potential duplication are important clearance issues. Therefore, we are requesting as we did in our Federal Register notice of June 18, 1979, that respondents inform OSM no later than November 30, 1980, as to how long it took to comply with reporting requirements listed in this clearance notice. This will give OSM an opportunity to re-evaluate its burden estimates and revise estimates where necessary.

We also maintain that where there are sections imposing reporting requirements which duplicate information that is required to be submitted to another Federal or State agency, any person may comply with these regulations by submitting to the appropriate regulatory authority a copy of such duplicate report, in lieu of preparing new reports. Information which is submitted as duplicative must be identical to the information required by these regulations in all substantive respects including, but not limited to, timeliness and detail of data, time span of data, geographic area, qualification of the preparer and other professional certification, specific maps, time tables and plans, measurements or monitoring devices, design and construction specifications, required demonstrations and methods of notice.

OSM is amending the appropriate Parts of 30 CFR Chapter VII to note that GAO clearance has been received for the identified recordkeeping and reporting requirements.

OSM has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. A regulatory analysis was prepared for the final rules published in the Federal Register on March 13, 1979 and is available upon request from the OSM Administrative Record Room, the address of which is noted above under "Addresses".

OSM has determined that this document is not a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement has been prepared separately for this action. However, an environmental impact statement was prepared for the rules published in the March 13, 1979 Federal Register, and is available upon request to the OSM Administrative Record Room, the address of which is given above under "Addresses".

### Announcement of Effective Dates

The effective dates of the reporting requirements contained in sections indicated in paragraphs 1, 2 and 3 below are hereby changed as follows:

1. Effective as of May 7, 1979 are 30 CFR §§ 700.12(b), 700.13, 707.12, 730.12(b), 731.12(a), 731.13, 731.14, 732.14, 732.11(d), 732.13(f), 732.14, 732.16(a), 732.16(b), 732.17(b), 732.17(f), 732.17(g), 733.12(a)(2), 741.11(c)(1), 741.12(c), 741.13(c), 741.15(a)(1), 741.15(b)(1), 741.21(b), 741.24(c), 741.25(b), 742.11(a), 742.13(a), 742.18(c), 742.18(d), 745.11 (a) and (b), 761.12(b)(2), 761.12(d), 761.12 (e) and (f), 764.13(b), 764.13(c), 764.15(d), 764.19(b), 764.21, 764.25(b), 769.11, 769.13, 771.15(c), 771.21(a)(1), 771.21(b)(2), 771.21(b)(3), 771.23, 776.11, 776.12, 778.13 thru 778.21, 779.11 thru 779.20, 779.24, 779.25, 779.27, 780.11 thru 780.16, 780.18, 780.21, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, 782.13 thru 782.21, 783.11 thru 783.22, 783.24, 783.25, 783.27, 784.11 thru 784.25, 785.13 (e), (f), (g) and (h), 785.14 thru 785.16, 785.17(b) (1), (2), (4), (6), and (8), 785.18(c), 785.19 thru 785.22, 786.11 (a), (b), (c) and (d) 786.14(b), 786.15, 786.17(c), 786.19, 786.23 (c) and (d), 788.11, 788.12, 788.14, 788.16, 788.18, 788.19, 800.11, 800.12, 806.11(b), 807.11(e)(4), 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.52(a)(3), 816.52(b)(1)(iii), 816.53(a), 816.62, 816.64, 816.65(a)(2)(iii), 816.67, 816.68, 816.71(j), 816.82(a)(4), 816.82(b), 816.87, 816.91(b), 816.117(b)(4), 816.117(c) (1) and (3), 816.131(b), 816.133(c) (1) thru (4), 816.133(c) (8) and (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1), 816.163(d), 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.52(a)(3), 817.52(b)(1)(iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.71(j), 817.82(a)(4), 817.82(b), 817.87, 817.91(b), 817.117(b)(4), 817.117(c) (1) and (3), 817.131(b), 817.133(c) (1) thru (4), 817.133(c) (8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1), 817.163(d), 822.14 (a) and (d), 826.12(b), 840.11(d)(3), 840.14(a), 840.14(b), 843.16, and 845.18(c).

2. Effective as of July 23, 1979 are 30 CFR Sections 776.13(b), 776.17(b), 779.21, 779.22, 784.26, 785.17(b) (3), (5), and (7), 786.15, 786.25(b) (2) and (4), 807.11(d), 807.11(h)(ii), 816.49(i), 816.52(a) (1) and (2), 816.52(b)(1)(ii), 816.95, 816.116, 817.49(i), 817.52(a) (1) and (2), 817.52(b)(1)(iii), 817.95, 817.116, and 843.14(c).

3. Effective as of August 23, 1979 are 30 CFR Sections 786.21, 805.14(b) and 807.11(a).

4. The amendments to the rules set forth below are effective immediately.

### Regulation Drafters

Principal authors of these regulations are Joan Shaw, Information and Records Management Division, Office of Surface Mining Reclamation and Enforcement and Chuck Hardy, Office of the Solicitor, Division of Surface Mining.

Dated: September 11, 1979.

Paul L. Reeves,

*Acting Director, Office of Surface Mining Reclamation and Enforcement.*

### Amendments to Rules

The following parts of Chapter VII of Title 30 of the Code of Federal Regulations are amended:

Parts 700, 707, 730, 731, 732, 733, 741, 742, 745, 761, 764, 769, 771, 776, 778, 779, 780, 782, 783, 784, 785, 786, 788, 800, 805, 806, 807, 816, 817, 822, 826, 840, 843, 845.

## PART 700—GENERAL

Part 700 is hereby amended to include at the end of Part 700 the following note:

Note.—The reporting requirements contained in 30 CFR 700.12(b) and 700.13 have been approved by the U.S. General Accounting Office under number B-190462 (R0589).

## PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

Part 707 is hereby amended to include at the end Part 707 the following note:

Note.—The recordkeeping requirement contained in 30 CFR 707.12 has been approved by the U.S. General Accounting Office under number B-190462 (R0590).

## PART 730—GENERAL REQUIREMENTS

Part 730 is hereby amended to include at the end of Part 730 the following note:

Note.—The reporting requirement contained in 30 CFR 730.12(b) has been approved by the U.S. General Accounting Office under number B-190462 (R0591).

## PART 731—SUBMISSION OF STATE PROGRAMS

Part 731 is hereby amended to include at the end of Part 731 the following note:

Note.—The reporting requirements contained in 30 CFR 731.12(a), 731.13 and 731.14 have been approved by the U.S. General Accounting Office under number B-190462 (R0592).

## PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

Part 732 is hereby amended to include at the end of Part 732 the following note:

Note.—The reporting requirements contained in 30 CFR 732.11(d), 732.13(f), 732.14, 732.16(a), 732.17(b), 732.17(f), 732.17(g), and recordkeeping requirement contained in 30 CFR 732.16(b) have been approved by the U.S. General Accounting Office under number B-190462 (R0593).

## PART 733—MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

Part 733 is hereby amended to include at the end of Part 733 the following note:

Note.—The reporting requirement contained in 30 CFR 733.12(a)(2) have been approved by the U.S. General Accounting Office under number B-190462 (R0594).

## PART 741—PERMITS

Part 741 is hereby amended to include at the end of Part 741 the following note:

Note.—The reporting requirements contained in 30 CFR 741.11(c)(1), 741.12(c), 741.13(c), 741.15(a)(1), 741.15(b)(1), 741.21(b), 741.24(c), and 741.25(b) have been approved by the U.S. General Accounting Office under number B-190462 (R0595).

## PART 742—BONDS AND LIABILITY INSURANCE ON FEDERAL LANDS

Part 742 is hereby amended to include at the end of Part 742 the following note:

Note.—The reporting requirements contained in 30 CFR 742.11(a), 742.13(a), 742.18(c) and 742.18(d) have been approved by the U.S. General Accounting Office under number B-190462 (R0596).

## PART 745—STATE-FEDERAL COOPERATIVE AGREEMENTS

Part 745 is hereby amended to include at the end of Part 745 the following note:

Note.—The reporting requirements contained in 30 CFR 745.11 (a) and (b) have been approved by the U.S. General Accounting Office under number B-190462 (R0598).

## PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Part 761 is hereby amended to include at the end of Part 761 the following note:

Note.—The reporting requirements contained in 30 CFR 761.12(b)(2), 761.12(e), 761.12(f), and the recordkeeping requirement contained in 30 CFR 761.12(d) have been approved by the U.S. General Accounting Office under number B-190462 (R0599).

## PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Part 764 is hereby amended to include at the end of Part 764 the following note:

Note.—The reporting requirements contained in 30 CFR 764.13(b), 764.13(c),

764.19(b), and the recordkeeping requirements contained in 30 CFR 764.15(d), 764.21 and 764.25(b) have been approved by the U.S. General Accounting Office under number B-190462 (R0600).

## PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

Part 769 is hereby amended to include at the end of Part 769 the following note:

Note.—The reporting requirements contained in 30 CFR 769.11 and 769.13 have been approved by the U.S. General Accounting Office under number B-190462 (R0601).

## PART 771—GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

Part 771 is hereby amended to include at the end of Part 771 the following note:

Note.—The reporting requirements contained in 30 CFR 771.15(c), 771.21(a)(1), 771.21(b)(2), 771.21(b)(3) and 771.23 have been approved by the U.S. General Accounting Office under number B-190462 (R0602).

## PART 776—GENERAL REQUIREMENTS FOR COAL EXPLORATION

Part 776 is hereby amended to include at the end of Part 776 the following note:

Note.—The reporting requirements contained in 30 CFR 776.11, 776.12, 776.13(b), and 776.17(b) have been approved by the U.S. General Accounting Office under number B-190462 (R0603).

## PART 778—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Part 778 is hereby amended to include at the end of Part 778 the following note:

Note.—The reporting requirements contained in 30 CFR 778.13, 778.14, 778.15, 778.16, 778.17, 778.18, 778.19, 778.20 and 778.21 have been approved by the U.S. General Accounting Office under number B-190462 (R0604).

## PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Part 779 is hereby amended to include at the end of Part 779 the following note:

Note.—The reporting requirements contained in 30 CFR 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, and 779.27 have been approved by the U.S. General Accounting Office under number B-190462 (R0605).

## PART 780—SURFACE MINING PERMIT APPLICATION—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

Part 780 is hereby amended to include at the end of Part 780 the following note:

Note.—The reporting requirements contained in 30 CFR 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.23, 780.25, 780.27, 780.29, 780.33, 780.35, and 780.37 have been approved by the U.S. General Accounting Office under number B-190462 (R0606).

## PART 782—UNDERGROUND MINING PERMIT APPLICATION—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Part 782 is hereby amended to include at the end of Part 782 the following note:

Note.—The reporting requirements contained in 30 CFR 782.13, 782.14, 782.15, 782.16, 782.17, 782.18, 782.19, 782.20, and 782.21 have been approved by the U.S. General Accounting Office under number B-190462 (R0607).

## PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION OF ENVIRONMENTAL RESOURCES IN THE PERMIT AND ADJACENT AREAS

Part 783 is hereby amended to include at the end of Part 783 the following note:

Note.—The reporting requirements contained in 30 CFR 783.11, 783.12, 783.13, 783.14, 783.15, 783.16, 783.17, 783.18, 783.19, 783.20, 783.21, 783.22, 783.23, 783.24, and 783.25 have been approved by the U.S. General Accounting Office under number B-190462 (R0608).

## PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Part 784 is hereby amended to include at the end of Part 784 the following note:

Note—The reporting requirements contained in 30 CFR 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.22, 784.23, 784.24, 784.25, and 784.26 have been approved by the U.S. General Accounting Office under number B-190462 (R0609).

## PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Part 785 is hereby amended to include at the end of Part 785 the following note:

Note—The reporting and recordkeeping requirements contained in 30 CFR 785.13 (e), (f), (g), and (h); 785.14; 785.15; 785.16; 785.17(b); 785.18(c); 785.19; 785.20; 785.21 and 785.22 have been approved by the General Accounting Office under number B-190462 (R0610).

## PART 786—REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

Part 786 is hereby amended to include at the end of Part 786 the following note:

Note—The reporting and recordkeeping requirements contained in 30 CFR 786.11 (a), (b), (c), and (d); 786.14(b); 786.15; 786.17(c); 786.19; 786.21; 786.23 (c) and (d); and 786.25(b) (2) and (4) have been approved by the U.S. General Accounting Office under number B-190462 (R0611).

## PART 788—PERMIT REVIEWS, REVISIONS AND RENEWALS AND TRANSFER, SALE AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

Part 788 is hereby amended to include at the end of Part 788 the following note:

Note—The reporting requirements contained in 30 CFR 788.12, 788.14; 788.18; 788.19 and the recordkeeping requirements contained in 30 CFR 788.11 and 788.16 have been approved by the U.S. General Accounting Office under number B-190462 (R0612).

## PART 800—GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND OPERATIONS UNDER REGULATORY PROGRAMS

Part 800 is hereby amended to include at the end of Part 800 the following note:

Note—The reporting requirements contained in 30 CFR 800.11 and 800.12 have been approved by the U.S. General Accounting Office under number B-190462 (R0613).

## PART 805—AMOUNT AND DURATION OF PERFORMANCE BOND

Part 805 is hereby amended to include at the end of Part 805 the following note:

Note—The reporting requirement contained in 30 CFR 805.14(b) has been approved by the U.S. General Accounting Office under number B-190462 (R0614).

## PART 806—FORM, CONDITIONS, AND TERMS OF PERFORMANCE BONDS AND LIABILITY INSURANCE

Part 806 is hereby amended to include at the end of Part 805 the following note:

Note—The reporting requirement contained in 30 CFR 806.11(b) has been approved by the U.S. General Accounting Office under number B-190462 (R0615).

## PART 807—PROCEDURES, CRITERIA AND SCHEDULE FOR RELEASE OF PERFORMANCE BOND

Part 807 is hereby amended to include at the end of Part 807 the following note:

Note.—The reporting requirement contained in 30 CFR 807.11(a) and the recordkeeping requirements contained in 807.11(e)(4), 807.11(f) and 807.11(h)(ii) have been approved by the U.S. General Accounting Office under number B–190462 (RO616).

## PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

Part 816 is hereby amended to include at the end of Part 816 the following note:

Note.—The reporting and recordkeeping requirements contained in 30 CFR 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.49(i), 816.52(a), 816.52(b)(1) (ii) and (iii), 816.53(a), 816.62, 816.64, 816.65(a)(2)(iii), 816.67, 816.68, 816.71(j), 816.82(a)(4), 816.82(b), 816.87, 816.91(b), 816.116, 816.117(b)(4), 816.117(c) (1) and (3), 816.131(b), 816.133(c) (1) thru (4), 816.133(c) (8) and (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1) and 816.163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO618).

## PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

Part 817 is hereby amended to include at the end of Part 817 the following note:

Note.—The reporting and recordkeeping requirements contained in 30 CFR 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.49(i), 817.52(a), 817.52(b)(1) (ii) and (iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.68, 817.71(j), 817.82(a)(4), 817.82(b), 817.87, 817.91(b), 817.95, 817.116, 817.117(b)(4), 817.117(c) (1) and (3), 817.131(b), 817.133(c) (1) thru (4), 817.133(c) (8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1) and 817.163(d) have been approved by the U.S. General Accounting Office under number B–190462 (RO619).

## PART 822—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS IN ALLUVIAL VALLEY FLOORS

Part 822 is hereby amended to include at the end of Part 822 the following note:

Note.—The recordkeeping requirements contained in 30 CFR 822.14 (a) and (d) have been approved by the U.S. General Accounting Office under number B–190462 (RO620).

## PART 826—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON STEEP SLOPES

Part 826 is hereby amended to include at the end of Part 826 the following note:

Note.—The reporting requirement contained in 30 CFR 826.12(b) has been approved by the U.S. General Accounting Office under number B–190462 (RO621).

## PART 840—STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT

Part 840 is hereby amended to include at the end of Part 840 the following note:

Note.—The reporting requirements contained in 30 CFR 840.11(d)(3), 840.14(a) and 840.14(b) have been approved by the U.S. General Accounting Office under number B–190462 (RO622).

## PART 843—FEDERAL ENFORCEMENT

Part 843 is hereby amended to include at the end of Part 843 the following note:

Note.—The reporting requirements contained in 30 CFR 843.14(c) and 843.16 have been approved by the U.S. General Accounting Office under number B–190462 (RO624).

## PART 845—CIVIL PENALTIES

Part 845 is hereby amended to include at the end of Part 845 the following note:

Note.—The recordkeeping requirement contained in 30 CFR 845.18(c) has been approved by the U.S. General Accounting Office under number B–190462 (RO625).

[FR Doc. 79–28717 Filed 9–14–79; 8:45 am]

BILLING CODE 4310–05–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

[CGD5–78–06R]

## Chesapeake Bay, Cove Point, Md.; Safety Zone Regulations

**AGENCY:** U.S. Coast Guard.

**ACTION:** Final rule.

**SUMMARY:** These regulations establish a safety zone in the vicinity of the Columbia LNG Corporation's offshore liquefied natural gas (LNG) receiving terminal near Cove Point, Maryland. This safety zone is needed to minimize the risk of collision between LNG carriers and other vessels while maneuvering in the vicinity of or moored to the offshore terminal and to protect the terminal itself.

This safety zone regulation requires compliance with the general safety zone regulations contained in 33 CFR Part 165.20 which prohibit persons from entering or remaining in the safety zone without authorization from the Captain of the Port. This safety zone is in effect at all times. The exact boundaries of the zone depend on whether an LNG vessel is present at, moored to, or maneuvering in the vicinity of the Columbia LNG offshore terminal. Mariners will be given advance notice of scheduled arrivals and departures of LNG vessels at the Cove Point terminal via broadcast Notice to Mariners. This safety zone will provide for the safe conduct of LNG operations while imposing a minimal burden on other persons using the waters of Chesapeake Bay, Maryland.

**EFFECTIVE DATE:** The regulations are effective October 15, 1979.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Eric J. Williams, III, USCG; Chief, Port Operations Department; Marine Safety Office, Customhouse, Baltimore, Maryland 21202; telephone (301) 752–3573.

**SUPPLEMENTARY INFORMATION:** On January 18, 1979, the Coast Guard published a proposed rule (44 FR 3882) concerning these amendments. Interested persons were given until March 5, 1979, to submit comments. Two commenters submitted written comments, and one oral comment was received. One change, editorial in nature, has been made as a result of a Coast Guard review of the comments received. No public hearing was held or requested.

### Discussion of Comments

The oral comment received expressed concern that the requirement for a 50-yard safety zone at all times on the shore side of the offshore terminal was not clear. Paragraph 165.510(b) requires a 50-yard safety zone on the shore side of the terminal when one or two LNG vessels are moored at the facility. Paragraph 165.510(c) requires the 50-yard safety zone when no LNG carrier is moored at the facility. This includes a vessel maneuvering in the vicinity of the terminal. Thus, all situations are covered. However, in response to this comment, an editorial change has been made to make the regulation more clear. Since paragraph 165.510(a) applies when an LNG vessel is maneuvering in the vicinity of the terminal (not actually moored to the facility) or when a carrier indicates its intention to get underway (the vessel is moored at the facility), the following phrase has been added to the final sentence of this paragraph: "and the area within 50 yards on the shore side of the Columbia LNG offshore terminal." An LNG carrier's intent to get underway will be communicated by one long blast of the carrier's steam whistle, as required by the Inland Rules of the Road for vessels moving from their docks or berths.

One commenter expressed approval of the proposed safety zone regulations as written.

One commenter presented a study with a series of comments covering the transit of a loaded LNG vessel throughout Chesapeake Bay as well as the safety zone proposal. Specifically, the commenter pointed out that advance notice of scheduled arrivals and departures of LNG vessels via broadcast Notice to Mariners leads one to assume that a rigid sailing schedule would be kept. He also stated this method does not allow for delays. Providing a Coast Guard escort was the proposed remedy. The Coast Guard has chosen the broadcast Notice to Mariners over the written Local Notice to Mariners precisely because it can be changed with the schedule of vessels. Maritime interests are familiar with this method of updating information. An escort vessel is not considered necessary as a result of potential schedule changes.

He also contended that some boating interests might not understand the required LNG carrier indication of intention to get underway and the resulting size increase of the safety zone, and he recommended an escort. This has not proven to be the case in slightly over one year of LNG vessel operations at the facility. Accordingly, the Coast Guard does not, at this time, intend to routinely patrol the LNG facility or to escort empty LNG vessels as they depart.

He also asked what justification there is for any safety zone when no LNG carriers are present at the Cove Point facility. The Coast Guard considers this portion of the safety zone necessary to prevent damage to, or the destruction of the offshore terminal. Therefore, the safety zone in its reduced size of 50 yards will remain as a requirement when no LNG carrier is present.

He also quoted, in part, an opening statement in the summary portion of the proposed rule, which read: "this additional precautionary measure is deemed necessary in consideration of the nature and quantity of the liquefied natural gas cargo * * *" The comment went on to state that the real concern for the proposed regulations was not the prevention of collision, but the prevention of the sudden release of liquefied natural gas which a collision might cause. The commenter then stated that if the danger of such a release were recognized, an active escort of the loaded LNG vessels should be provided throughout the Bay. The proposed regulations were written with regard to both the hazard of the cargo and also the peculiar nature of the vessels themselves. Not quoted by the commenter, but following as the remainder of the partially quoted sentence is: "and the limited ability of the LNG vessels to take evasive action when maneuvering to approach or depart the offshore terminal." As for the escort of LNG vessels, this is outside the scope of these proposed safety zone regulations.

He also commented that if active escort of LNG carriers were instituted, an analysis under DOT Notice 78-1 would have to be undertaken. Since the escort of LNG vessels is not a subject of these safety zone regulations, this point is considered moot.

He also pointed out that prohibiting persons from entering the safety zone would not necessarily prevent vessels from entering the zone; also, that the existence of a regulation, even if widely disseminated, does not in and of itself insure accident protection. The Coast Guard does monitor and enforce the safety zone, and experience to date does not indicate the need for a Coast Guard vessel to be on scene after the LNG carrier is moored. This need is continually being assessed, and current practice will be changed only if it can be justified.

He was also concerned with the size, configuration, lack of marking and fluctuating size of the safety zone. It was further proposed that the zone remain constant for loaded LNG tankers, whether moored or underway. The Coast Guard asserts that the approach to the pier for docking is the critical time due to the configuration of the vessels and their large sail areas. When the vessel is moored, this element is no longer present and the safety zone can be smaller to permit maritime interests to pursue normal activities without unnecessary disruption. The safety zone, as proposed merely establishes on a permanent basis the same safety zone that is put into effect on a case-by-case basis as each LNG vessel visits the facility. The fluctuating size has caused no confusion and was arrived at after a lengthy consideration of the safety needs of the entire maritime community. The final rule will permit the marking of the safety zone on navigation charts of the area. Accordingly, no change has been made as a result of this comment.

In summary, the commenter stated the proposed safety zone regulations were "palliative and lacking in efficacy when compared to other measures such as active escort and continuous 'In Bay' monitoring." He feels the regulations do not account for possible future navigational problems. The Coast Guard has proposed the safety zone regulations as but one measure to promote safety on the Chesapeake Bay.

Most of the commenter's remarks concern the desire for active escort of LNG vessels. The Coast Guard currently escorts all loaded LNG vessels from the time they enter Chesapeake Bay until they moor at Cove Point. Coast Guard inspectors board the LNG vessels at Cape Henry and ride them during the transit to Cove Point. While aboard, they inspect the vessel's cargo-handling equipment and the vessel's safety features to insure they are in compliance with federal regulations and local requirements. On-scene monitoring of the hook-up, transfer, and disconnect procedures are conducted continually by the Coast Guard Marine Safety Detachment at Cove Point.

These requirements for LNG vessel escort, inspection, and monitoring, along with other safeguards, are contained in the Chesapeake Bay LNG OPLAN (operations plan). This OPLAN has been promulgated jointly as a COTP Order by the COTP Hampton Roads and the COTP Baltimore. The commenter is possibly unaware of these other requirements. Thus, these proposed regulations are only a part of the safety effort and are neither palliative or lacking in efficacy. The regulations stand as proposed except for the editorial change to 33 CFR 165.510(a), last line.

Accordingly, 33 CFR Part 165 is amended by adding a new § 165.510, reading as follows:

**§ 165.510 Cove Point, Chesapeake Bay, Maryland.**

(a) The waters and waterfront facilities located within the following boundary constitute a safety zone effective when an LNG carrier is maneuvering in the vicinity of the Cove Point terminal and when a moored LNG carrier indicates its intention to get underway: A line beginning at a point one-half mile NW of the end of the north pier of the Columbia LNG facility at Cove Point, Maryland, located at 38°24'43" N latitude, 76°23'32" W longitude; thence 056°T to a point 2800 yards offshore at 38°24'59" N latitude, 76°23'01" W longitude; thence 146°T to a point located 2300 yards offshore at 38°23'52" N latitude, 76°22'03" W longitude; thence 236°T to a point one-half mile SE of the end of the south pier of the Columbia LNG facility at Cove Point, Maryland, located 38°23'39" N latitude, 76°22'35" W longitude; thence northwesterly to the point of origin and the area within 50 yards on the shore side of the Columbia LNG Corporation offshore terminal.

(b) The waters and waterfront facilities located within the following boundary constitute a safety zone when

a LNG carrier is moored at the Columbia LNG offshore terminal; an area extending 50 yards shoreward of the offshore terminal and 200 yards offshore of all parts of the offshore terminal and the LNG carrier.

(c) The waters and waterfront facilities located within the following boundary constitute a safety zone when no LNG carrier is moored at the receiving terminal: The area within 50 yards of the Columbia LNG offshore terminal, at Cove Point, Maryland.

(d) The general regulations governing safety zones as contained in 33 CFR Part 165.20 apply.

(Sec. 6, Pub. L. 95-474, 92 Stat. 1475 (33 U.S.C. 1225))

**EFFECTIVE DATE:** This amendment to Part 165 becomes effective on October 15, 1979.

Dated: August 24, 1979.

J. W. Kime,

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, MD.*

[FR Doc. 79-28801 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[FRL 1305-7]

### Delayed Compliance Order for Bethlehem Steel Corp.

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** By this rule, the Administrator of U.S. EPA disapproved a Delayed Compliance Order to Bethlehem Steel Corporation (Bethlehem). The Order requires the Company to bring air emissions from its coke oven batteries at Burns Harbor, Indiana, into compliance with Regulations APC-3 and APC-5 of the Indiana Air Pollution Control Board (Indiana APC-3 and Indiana APC-5). Because this Order is disapproved by U.S. EPA, Bethlehem's compliance with the Order will not preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the State Implementation Plan (SIP) regulations covered in the Order.

**DATES:** This rule takes effect September 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Ms. Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, telephone (312) 353-2082.

**SUPPLEMENTARY INFORMATION:** On March 7, 1979 the Regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 12461) a notice setting out the provisions of a proposed State Delayed Compliance Order for Bethlehem. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed disapproval.

The Agency's proposed disapproval was based upon six separate factors. These were as follows:

(1) Paragraph 10 of the Findings in the State Order states that there is no currently available control technology guaranteed to bring coke batteries into compliance—but that the Order was a "best effort" program. This is contrary to the U.S. EPA's position that controls exist that can attain compliance and it undercuts the reasonableness and enforceability of the Order.

(2) Paragraph 2 of the Order states that notwithstanding paragraph 1 (requirement for compliance), Bethlehem may challenge the applicability and technical feasibility of APC-3 and APC-5, should it fail to comply with the regulations. This means that Bethlehem agrees to install equipment, but if it fails to comply with the regulations, it may challenge the regulations. This equates to no *real* agreement or Order to comply with the regulations.

(3) Paragraph 8 contains a clause which states that if there is a delay in meeting interim or final dates for pushing controls (and compliance) which is "not within the reasonable control of" Bethlehem, then the Board agrees not to impose or seek criminal or civil penalties. The Board also agrees not to seek criminal penalties for delay (from such events) in meeting the final date for charging controls (and compliance), and no civil or criminal penalties for delays beyond the interim charging program dates. These provisions amount to agreements not to enforce violations of the Order.

(4) U.S. EPA is not satisfied that the program to control stack emissions is sufficient to attain compliance.

(5) The State Order addresses each operation (push, charge, etc.) separately. Regulation APC-5 considers the entire coke battery to be a single "process." In addressing the operations separately, there is *no* requirement for compliance at the stacks, standpipes, doors, etc.

(6) In addition, visible emissions Regulation APC-3 cited in the State Order is not the APC-3 which constitutes a part of the applicable State Implementation Plan (SIP). This is the result of EPA's disapproval of the 15-minute exemption contained in the State's submittal (40 FR 50032, October 16, 1975). Consequently, an approval of this Order would constitute approval of compliance with a requirement less stringent than the applicable SIP and is not authorized by Section 113(d)(1) of the Act.

One letter of comment was received during the public comment period. This was from Bethlehem, the source involved in the State administrative order. Bethlehem's objections can be summarized as follows:

1. U.S. EPA failed to determine whether the State order was issued in accordance with Section 113(d) of the Act within the ninety-day period established by that Section.
2. The reasons for proposed disapproval set forth in the Federal Register do not address the appropriate statutory criteria.
3. U.S. EPA's interpretation of SIP Regulations APC-3 and APC-5 is erroneous.
4. U.S. EPA's reasons for the proposed disapproval are:

* * * in conflict with Section 113(d)(1)(C)-(D), the Indiana Implementation plan, the case of *Indiana & Michigan Electric Company* v. *EPA*, 509 F.2d 839 (7th Cir. 1975), other applicable decisions, and the Constitution insofar as they would require that Bethlehem agree to do the impossible, waive or be deprived of its rights to administrative and/or judicial hearings on pertinent issues, or be penalized for occurrences or failures beyond its control with or without hearing.

In issuing this final disapproval of the State order, the Agency has determined that its objections as set forth in the March 7, 1979 Federal Register generally remain valid. In addition, U.S. EPA has determined that Bethlehem's objections do not warrant a contrary position.

First, the fact that U.S. EPA did not publish this final disapproval within ninety days of the State order's passage is not a bar. Although the State apparently adopted the agreement as a final order on November 15, 1978, it was not submitted to U.S. EPA until December 26, 1978. Proposed disapproval on March 7, 1979 therefore occurred within the statutory ninety-day period.

In addition, a civil action was initiated by U.S. EPA under Section 113(b) of the Act against the Bethlehem Steel Corporation on December 20, 1978. This action is based, in part, upon violations of regulations APC-3 and APC-5 of the Indiana SIP by Bethlehem's coke batteries located in Burns Harbor, Indiana. Because the civil action addresses the facilities which are the subject of the Order under consideration, the filing of the action constituted a rejection of the Order issued by the Indiana Air Pollution Control Board and put both the State of Indiana and Bethlehem on adequate notice as to the Agency's position in this matter.

Second, EPA believes that the six bases outlined in its proposed disapproval remain valid for purposes of final disapproval. The only clarification the Agency's rationale for disapproval is with regard to paragraph 5. Thus, the Order is disapproved not because each battery operation is addressed

separately, but because certain pollutant-emitting operations whose control is critical to compliance were not addressed, e.g., doors, standpipes and combustion stacks.

Section 113(d) requires U.S. EPA review of State orders to assure that they in fact provide for "final compliance with the requirement of the applicable implementation plan * * *" Section 113(d)(1)(D). Because of the six factors previously discussed, this statutory criterion is not met. In addition, Section 113(d)(1)(B) requires that a Delayed Compliance Order contain a "* * * schedule and timetable for compliance," which is defined in Section 302(b) as including an "* * * *enforceable* sequence of actions or operations leading to compliance * * *" (*emphasis added*). For the reasons previously enumerated, the Bethlehem Order is not an enforceable agreement.

Bethlehem also asserted that U.S. EPA's interpretation of the applicable regulations was erroneous. U.S. EPA continues to believe that its interpretation of Regulations APC-3 and APC-5 is proper. It should be noted that this issue has also been raised by Bethlehem in the Agency's civil action against this source.

With regard to Bethlehem's final comment, the U.S. EPA maintains that this disapproval is in accordance with the statutory scheme established by the Clean Air Act and applicable case law. Again, it is anticipated that such objections can be raised by Bethlehem in the pending civil action.

Therefore, the Delayed Compliance Order issued by the Indiana Air Pollution Control Board to Bethlehem is disapproved by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

(42 U.S.C. 7413(d), 7601.)

Dated: September 10, 1979.

Douglas M. Costle,

*Administrator.*

1. In consideration of the foregoing, chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

By adding an entry to the table in § 65.192 to read as follows:

**§ 65.192 U.S. EPA disapproval of State Delayed Compliance Orders.**

The State Order identified below has been disapproved by the Administrator in accordance with Section 113(d)(2) of the Act and with this part. With regard to this Order, the Administrator has determined that it does not satisfy the applicable requirements of Section 113(d) of the Act.

| Source | Location | Order No. | Date of FR proposal | Regulation involved | Final compliance date |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| Bethlehem Steel Corporation | Burns Harbor, Indiana. | None | 3-7-79 | APC-3, APC-5 | 7-1-79 |
| * | * | * | * | * | * |

2. The text of the order reads as follows:

Air Pollution Control Board of the State of Indiana, Plaintiff vs. Bethlehem Steel Corporation, Burns Harbor, Indiana, Respondent; Cause No. A-59.

Findings of Fact

1. That the Air Pollution Control Board of the State of Indiana ("the Board") is an agency of the State of Indiana duly empowered pursuant to IC 13-1-1 et seq., to act upon complaints of alleged air pollution brought by any person and to issue such orders with respect thereto as it deems proper.

2. That the Board has jurisdiction over both the subject matter and the parties to this action.

3. That pursuant to the provisions of IC 13-1-1 and IC 13-7-11-2, notice and service of same is hereby waived by Respondent.

4. That Bethlehem Steel Corporation owns and operates a steel production facility in Burns Harbor, Indiana.

5. That as part of its steel production process, Respondent owns and operates two by-product coke oven batteries.

6. That notwithstanding the control systems presently installed and operating, the Board's investigation of the operation of the coke oven batteries discloses possible violations of the standards set forth in Indiana Regulations APC 3 and APC 5.

7. That on March 29, 1973, the Board adopted a valid Order between the Respondent and the Board. Said Order set forth dates for compliance with Indiana Regulations APC 3 and APC 5 by Respondent. On July 24, 1973; February 26, 1975; October 22, 1975; June 23, 1976; and August 24, 1977, Amendments No. 1, No. 2, No. 3, No. 4, and No. 5, respectively, to that Order were adopted by the Board, which Amendments amended and superseded certain dates for compliance by the dates outlined in said Amendments. That for purpose of clarity, the schedules for compliance are incorporated in their entirety, including both incremental dates that have passed and those yet to come.

8. That in order to comply with the Delayed Compliance Order requirements of the Clean Air Act as amended August 7, 1977, both the Respondent and the Board desire that these Findings of Fact and Recommended Order amend and supersede the Order adopted March 29, 1973, as amended, with respect to the pushing and charging emissions from Batteries No. 1 and No. 2 set forth herein.

9. That after a thorough investigation of all relevant facts, including public comment, the Board has determined that the Respondent is unable to immediately comply with the requirements of APC 3 and APC 5, where applicable, at the Burns Harbor Plant Coke Oven Batteries, and therefore, pursuant to Section 113(d) of the Federal Clean Air Act, issues this Delayed Compliance Order which:

(A) has been issued after notice to the public containing the contents of the proposed order and opportunity for public hearing;

(B) contains a schedule and timetable for compliance;

(C) requires compliance with applicable interim requirements and requires the emission monitoring and reporting by the source authorized to be required under Sections 110(a)(2)(F) and 114(a)(1) of the Federal Clean Air Act;

(D) provides for final compliance with the requirements of the applicable regulations as expeditiously as practicable, but in no event later than July 1, 1979; and,

(E) hereby notifies the Respondent that unless exempted under Section 120(a)(2)(B) or (C), of the Federal Clean Air Act, it will be required to pay a noncompliance penalty effective July 1, 1979, in the event Respondent fails to achieve final compliance by July 1, 1979.

10. That there is no readily available control technology or known operating technologies guaranteed to bring coke batteries into compliance with Indiana Regulations APC 3 and APC 5. The compliance program set forth in the following Order, however, represents the best efforts of the Board and the Respondent to devise a program to provide for achieving compliance with APC 3 and APC 5 by July 1, 1979.

11. That pursuant to Section 107 of the Federal Clean Air Act, as amended, the area in the vicinity of the Burns Harbor Plant has been recommended by the Board and designated by the United States Environmental Protection Agency on March 3, 1978, as unclassifiable with respect to attainment of the National Ambient Air Quality Standard for particulate matter.

12. That on March 22, 1978, the Board approved for public hearing revised Regulation APC 3 regarding visible emissions and new Regulation APC 9 regarding coke oven emissions which, if promulgated as proposed, may alter the performance required

to achieve compliance with State regulations at the coke oven batteries.

Recommended Order

Now, therefore, based upon the above Findings of Fact and upon consent of the parties, it is hereby Ordered, adjudged and decreed as follows:

1. That Respondent, Bethlehem Steel Corporation, shall abate particulate emissions according to the following schedule which provides for compliance with Indiana Air Pollution Control Board Regulations APC 3 and APC 5 no later than July 1, 1979.

A. Pushing Emissions. 1. Submit final plans for three enclosed coke guides, two quench cars, and two stationary gas cleaning systems with associated air pollution control equipment for Batteries No. 1 and No. 2 by October 31, 1976.

2. Place purchase orders by November 30, 1976.

3. Complete installation by November 30, 1978.

4. Achieve compliance by February 15, 1979.

B. Charging Emissions. 1. Submit program for modified stage charging by September 1, 1977.

2. Commence issuance of purchase orders pursuant to preliminary engineering by October 31, 1977.

3. Commence construction by April 1, 1978.

4. Complete engineering by July 31, 1978.

5. Complete construction by June 3, 1979.

6. Achieve compliance by July 1, 1979.

2. That notwithstanding the provisions of paragraph 1 hereof, nothing herein shall be or shall be deemed to be a waiver of Respondent's right to challenge the applicability or technical feasibility of Indiana Air Pollution Control Board Regulations APC 3 and APC 5 in any action brought to enforce the terms and conditions of this Order, which action is based in whole or in part on a failure to achieve compliance with said Regulations, provided however, that this provision shall not excuse the Respondent from installing the control equipment committed to in paragraph 1 of this Order.

3. That in the interim and until the time that compliance with Indiana Regulation APC 3 and APC 5 is achieved, Respondent shall employ the Operation and Maintenance Practice Program attached to this Order as Exhibit I with respect to the pushing and charging emissions from Batteries No. 1 and No. 2. This is the best practicable system of emissions reduction for the interim period.

4. That beginning thirty (30) days after the date of this Order, quarterly progress reports shall be submitted by the Respondent to the Board. Respondent shall include in such reports emission monitoring data required by paragraph 5 of this Order.

5. Respondent shall monitor the pressure drop and water flow rate of the land-based scrubber on Coke Oven Batteries No. 1 and No. 2, and shall maintain such data at the office of the Environmental Control Department at Burns Harbor and make such data available for inspection upon the request of a staff member of the Air Pollution Control Division.

6. That upon application of Respondent, the provisions of this Order and plans and schedules submitted and approved hereunder may be modified by the Board when air pollution control standards applicable to the by-product coke ovens are changed; provided, however, that this Order shall be construed to provide for final compliance with the requirements of the applicable regulations as expeditiously as practicable, but in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such regulations, whichever is later. Any order, decision or other action taken by the Board upon such application may be appealed to the courts of the State as provided by IC 4-22-1-1 et seq.

7. Failure of the Respondent to achieve final compliance with Indiana Regulations APC 3 and APC 5 by July 1, 1979, may subject Respondent to a claim for a noncompliance penalty in accordance with Section 120 of the Clean Air Act, 42 U.S.C. 7420 and any State Regulation that may be submitted to and approved by the Administrator in accordance with that Section. Notwithstanding the above, Respondent reserves the right to contest in any forum the application of such penalty for noncompliance to any source covered by this Order.

8. That should events occur which cause a delay in meeting any interim dates established in this Order and these events are entirely beyond the control of the Respondent, upon application of Respondent these dates may be modified by the Board. Any order, decision or other action taken by the Board upon such application may be appealed to the courts of the State as provided by IC 4-22-1-1 et. seq.

Should the Air Pollution Control Board, after hearing, determine that a delay in meeting the requirements of Section 1(A) of this Order is due to events which are not within the reasonable control of the Respondent, the Air Pollution Control Board agrees not to impose or seek any civil or criminal penalties for any delay beyond either the interim dates set forth in this Order or the July 1, 1979, date established by the Clean Air Act, other than those provided for under Section 120 of the Clean Air Act. Should the Air Pollution Control Board after hearing determine that a delay in meeting the requirements of Section 1(B) of this Order is due to events which are not within the reasonable control of Respondent, the Air Pollution Control Board agrees not to impose or seek criminal penalties for delays beyond the July 1, 1979, date established by the Clean Air Act or civil or criminal penalties for any delays beyond any of the interim dates set forth in this Order, other than those provided for under Section 120 of the Clean Air Act or rules or regulations promulgated thereunder.

9. This Order shall terminate with respect to any of the operations referred to in Section 1(A) or 1(B) as of the date that emissions from such operations are in compliance.

10. That nothing herein contained shall in any way affect the Board's right to enforce Air Pollution regulations which deal with provisions not covered by this Order.

I have reviewed the above Findings of Fact and Recommended Order and hereby recommend that the Air Pollution Control Board adopt this as its Final Order.

Dated: November 15, 1978.

Harry D. Williams,

*Director, Air Pollution Control Division.*

I am duly authorized to legally bind Bethlehem Steel Corporation in this matter, and I have received a copy of the above Recommended Order and agree to be bound by said Order when issued by the Board and hereby waive the notice required by Indiana Code 13-1-1 and 13-7-11-2.

Dated: November 13, 1978.

C. R. Rough,

*Bethlehem Steel Corporation.*

[FR Doc. 79-28717 Filed 9-14-79; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 65

[FRL 1315-5]

## Delayed Compliance Order for Amoco Oil Co.

**AGENCY:** United States Environmental Protection Agency (U.S. EPA).

**ACTION:** Final rule.

**SUMMARY:** By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Amoco Oil Company (Amoco). The Order requires the Company to bring air emissions from its volatile organic materials loading rack at Aurora, Ohio into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Amoco's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violations of the SIP regulations covered in the Order.

**DATES:** This rule takes effect September 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Roger M. Grimes, Attorney, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

**SUPPLEMENTARY INFORMATION:** On June 15, 1979, the regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 34522) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Amoco. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public

hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Amoco by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places Amoco on a schedule to bring its volatile organic materials loading rack at Aurora, Ohio, into compliance as expeditiously as practicable with Regulation AP-5-07(E), a part of the federally approved Ohio State Implementation Plan. Amoco is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Section 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Amoco to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by Amoco will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Amoco is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective September 17, 1979, because of the need to immediately place Amoco on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: September 10, 1979.

Douglas M. Costle,

*Administrator.*

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in § 65.400:

§ 65.400 Federal delayed compliance order issued under section 113(d) (1), (3), and (4) of the act.

| Source | Location | Order No. | Date of FR proposal | SIP regulation involved | Final compliance date |
|---|---|---|---|---|---|
| Amoco Oil Company | Aurora, Ohio | EPA-5-79-A-49 | 06/15/79 | AP-5-07(E) | 07/01/79 |

[FR Doc. 79-28798 Filed 9-14-79; 8:45 am]

BILLING CODE 6560-01-M

## 40 CFR Part 117

[FRL 1319-6]

## Water Programs; Determination of Reportable Quantities for Hazardous Substances; Deferral of Effective Date

**AGENCY:** Environmental Protection Agency.

**ACTION:** Deferral of effective date.

**SUMMARY:** On August 29, 1979, EPA promulgated regulations governing the discharge of substances designated as hazardous under Section 311 of the Clean Water Act. 44 FR 50766; 40 CFR Part 117. These rules become effective in most respects on September 28, 1979. At the same time, EPA published notice of intent to delete calcium oxide and calcium hydroxide ("lime") from the list of hazardous substances. 44 FR 50783. Final action regarding the status of lime as a hazardous substance is not expected until after the effective date of 40 CFR Part 117. The Agency believes it would be inappropriate to apply and enforce the regulations as to lime until such time as final action is taken with respect to lime.

**EFFECTIVE DATE:** Accordingly, the effective date of 40 CFR Part 117 as it applies to lime is deferred pending further notice in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0100.

Dated: September 7, 1979.

Thomas C. Jorling,

*Assistant Administrator for Water and Waste Management.*

[FR Doc. 79-28800 Filed 9-14-79; 8:45 am]

BILLING CODE 6560-01-M

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 101-49

[FPMR Amdt. H-117]

## Utilization, Donation, and Other Disposal of Foreign Gifts and Decorations

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** Section 515 of Pub. L. 95-105, approved August 17, 1977, 91 Stat. 862; 5 U.S.C. 7342, provides generally for the utilization, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, of gifts of more than minimal value and decorations given to employees of the U.S. Government by foreign governments. This regulation provides the necessary implementation of those provisions of Pub. L. 95-105 relating to the utilization, donation, or other disposal of foreign gifts and decorations that are under the purview of the Administrator of General Services. It also incorporates applicable provisions of section 712 of Pub. L. 95-426, approved October 7, 1978, 92 Stat. 994, which amended 5 U.S.C. 7342 to provide special handling and disposal procedures for foreign gifts and decorations received by Senators and Senate employees.

**EFFECTIVE DATE:** September 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Duda, Director, Utilization Division, Office of Personal Property, Federal Property Resources Service, General Services Administration, Washington, DC 20406 (703-557-1540).

**SUPPLEMENTARY INFORMATION:** FPMR Temporary Regulation H-18 (42 FR 65171, Dec. 30, 1977) and Supplement 1 (44 FR 8264, Feb. 9, 1979) are canceled and deleted from the appendix at the end of Subchapter H in 41 CFR Chapter 101. In addition to the incorporation of changes required by Pub. L. 95-426, minor editorial and procedural changes have also been made.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the

economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

The table of contents for Subchapter H of title 41 of the Code of Federal Regulations is amended to add new Part 101–49 as follows:

## PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS



Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and sec. 515, 91 Stat. 862; 5 U.S.C. 7342.

New Part 101–49 is added to Title 41 of the Code of Federal Regulations as follows:

## PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

### § 101–49.000 Scope of part.

This part prescribes policies and procedures governing the utilization, donation, and disposal of gifts and decorations from foreign governments in accordance with 5 U.S.C. 7342.

### § 101–49.001 Definitions.

For the purposes of this Part 101–49, the following terms shall have the meanings set forth in this section.

### § 101–49.001–1 Employee.

"Employee" means:

(a) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(b) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of the services;

(c) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(d) A member of a uniformed service;

(e) The President and the Vice President;

(f) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(g) The spouse of an individual described in paragraphs (a) through (f) of this section (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1954) of this individual, other than a spouse or dependent who is an employee under paragraphs (a) through (f) of this section.

### § 101–49.001–2 Foreign government.

"Foreign government" means:

(a) Any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(b) Any international or multinational organization whose membership is composed of any unit of a foreign government described in paragraph (a) of this section; and

(c) Any agent or representative of any unit or organization while acting as such.

### § 101–49.001–3 Gift.

"Gift" means a tangible or intangible present (other than a decoration) tendered by or received from a foreign government.

### § 101–49.001–4 Decoration.

"Decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by or received from a foreign government.

### § 101–49.001–5 Minimal value.

"Minimal value" means a retail value in the United States at the time of acceptance of $100 or less, except that:

(a) On January 1, 1981, and at 3-year intervals thereafter, "minimal value" will be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(b) Regulations of an employing agency may define "minimal value" for its employees to be less than the value provided under this section.

### § 101–49.001–6 Employing agency.

"Employing agency" means:

(a) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(b) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(c) The Administrative Office of the United States Courts, for judges and judicial branch employees; and

(d) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

## Subpart 101-49.1—General Provisions

### § 101-49.101 Custody of gifts and decorations.

(a) GSA generally will not take physical possession of gifts or decorations governed by this Part 101-49. Gifts and decorations shall remain in the custody and be the responsibility of the employing agency.

(b) GSA will direct the disposition of gifts and decorations when reported to GSA by the employing agency by:

(1) Transfer to Federal agencies;

(2) Donation for public display or reference purposes;

(3) Sale with the approval of the Secretary of State; or

(4) Destruction.

### § 101-49.102 Care and handling.

Each employing agency shall be responsible for and bear the cost of performing care and handling of gifts and decorations pending disposition and removal from its physical custody.

### § 101-49.103 Information on availability for Federal utilization or donation.

GSA will provide information on the availability of gifts and decorations, when reported to GSA, to Federal agencies and appropriate State agencies for surplus property.

### § 101-49.104 Cooperation of employing agencies.

Each employing agency shall cooperate fully in the inspection of gifts and decorations in its custody and in providing assistance in pickup and shipment upon receipt of GSA-approved documentation.

### § 101-49.105 Appraisals.

Employing agencies shall obtain independent appraisals of specific gifts when requested by GSA.

### § 101-49.106 Gifts and decorations received by Senators and Senate employees.

### § 101-49.106-1 Disposal of gifts and decorations by the Senate.

Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal or are deposited after termination of official use will be disposed of by the Commission on Art and Antiquities of the United States Senate in accordance with 5 U.S.C. 7342[e][2].

### § 101-49.106-2 Disposal of gifts and decorations by GSA.

Gifts and decorations received by a Senator or an employee of the Senate not disposed of by the Commission on Art and Antiquities will be reported to GSA in accordance with § 101-49.201 for utilization, donation, or other disposal under this Part 101-49.

### § 101-49.106-3 Gifts and decorations not disposed of by GSA.

GSA will notify the Commission on Art and Antiquities when a gift or decoration received by a Senator or an employee of the Senate has not been disposed of within a year after the gift or decoration is reported to GSA. A gift or decoration not disposed of by GSA may be disposed of by the Commission on Art and Antiquities. The Commission on Art and Antiquities will notify GSA of its intent to dispose of a gift or decoration. Gifts and decorations that the Commission on Art and Antiquities does not wish to dispose of will continue to be handled and disposed of in accordance with this Part 101-49.

### § 101-49.107 Approvals.

The utilization, donation, or other disposal of gifts and decorations reported to GSA under this Part 101-49 will be approved by the Commissioner, Federal Property Resources Service, GSA.

### § 101-49.108 Disposal of firearms.

Firearms received as foreign gifts that are reported to GSA will be offered for transfer to Federal agencies, including law enforcement activities. Those firearms not transferred to a Federal activity may be donated for display purposes at the discretion of GSA. Sale of firearms shall be in accordance with § 101-45.309-1.

## Subpart 101-49.2—Utilization of Foreign Gifts and Decorations

### § 101-49.200 Scope of subpart.

This subpart prescribes policies and procedures governing the utilization and transfer within the Federal Government of foreign gifts and decorations.

### § 101-49.201 Reporting.

### § 101-49.201-1 Gifts and decorations required to be reported.

(a) Except as provided in §§ 101-49.106 and 101-49.201-2, tangible gifts and decorations that are not retained for official use or returned to the donor shall be reported to GSA within 30 calendar days after deposit of the gift or decoration with the employing agency. Tangible gifts and decorations that have been retained for official use and have not been returned to the donor shall be reported to GSA within 30 calendar days after termination of the official use. Gifts and decorations shall be reported on Standard Form 120, Report of Excess Personal Property (see § 101-43.4901-120), to the General Services Administration (DP), Washington, DC 20406. The Standard Form 120 shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS" and include the following information:

(1) The name and position of the employee recipient;

(2) A full description of the gift or decoration;

(3) The identity, if known, of the foreign government and the name and position of the individual who presented the gift or decoration;

(4) The date of acceptance of the gift or decoration;

(5) The estimated value in the United States of the gift or decoration at the time of acceptance, or the appraised value, if known;

(6) The current location of the gift or decoration;

(7) The name, address, and telephone number of the responsible accountable official in the employing agency; and

(8) An indication whether the employee recipient is interested in purchasing the gift if it is sold by GSA.

(b) Gifts and decorations received by the President or a member of the President's family will be reported to the General Services Administration (NL), Washington, DC 20408, using Standard Form 120, completed as described in paragraph (a) of this section.

(c) The Central Intelligence Agency may delete the information required in paragraphs (a) (1) and (3) of this section if the Director of Central Intelligence certifies in writing to the Secretary of State that the publication of this information could adversely affect U.S. intelligence sources.

(d) This report has been cleared in accordance with FPMR 101-11.11 and is exempt from reports control.

### § 101-49.201-2 Gifts and decorations not to be reported.

(a) The following gifts and decorations shall not be reported to GSA:

(1) Gifts and decorations returned to the donor;

(2) Gifts and decorations retained by the employing agency for official use, except upon termination of the official use;

(3) Decorations retained by the employee recipient with the approval of the employing agency;

(4) Intangible gifts, including checks, money orders, bonds, shares of stock, and other securities and negotiable instruments (see § 101-49.205);

(5) Cash, currency, and money, except those with possible historic or numismatic value (see § 101-49.205); and

(6) Gifts and decorations received by a Senator or an employee of the Senate

disposed of by the Commission on Art and Antiquities of the United States (see § 101–49.106).

(b) Gifts and decorations covered by paragraphs (a) (1), (2), and (3) of this section will be handled in accordance with employing agency regulations.

**§ 101–49.202 Transfers to other Federal agencies.**

(a) Gifts and decorations will be made available for transfer for a period of 60 calendar days following receipt by GSA of the Standard Form 120 to activities specified in § 101–43.315–1. Transfers will be made as considered appropriate by GSA, generally on a first-come-first-served basis.

(b) Transfers will be accomplished by submitting for approval a Standard Form 122, Transfer Order Excess Personal Property (see § 101–43.4901–122), or any other transfer order form approved by GSA, to the General Services Administration (DP), Washington, DC 20406. The Standard Form 122 or other transfer order form shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS" and include all information furnished by the employing agency as specified in § 101–49.201–1(a).

**§ 101–49.203 Costs incident to transfer.**

All transfers of gifts and decorations will be made without reimbursement, except that direct costs incurred by the employing agency in actual packing, preparation for shipment, loading, and transportation may be recovered by the employing agency from the transferee agency if billed by the employing agency. (See § 101–43.317–1.)

**§ 101–49.204 Gifts and decorations no longer required by transferee agency.**

Gifts and decorations no longer required by the transferee agency shall be reported as provided in § 101–49.201–1.

**§ 101–49.205 Deposit of money and certain intangible gifts with the Department of the Treasury.**

Money, cash, currency, and such intangible gifts as checks, money orders, bonds, shares of stock, and other securities and negotiable instruments not required to be reported to GSA shall be deposited with the Department of the Treasury by the employing agency in accordance with applicable laws and regulations.

## Subpart 101–49.3—Donation of Foreign Gifts and Decorations

**§ 101–49.300 Scope of subpart.**

This subpart prescribes policies and procedures governing the donation of foreign gifts and decorations to public agencies and eligible nonprofit tax-exempt activities for public display purposes and, in the case of books or manuscripts, for public display or reference purposes.

**§ 101–49.301 Donation of gifts and decorations.**

(a) Gifts and decorations for which there is no Federal requirement as determined by GSA will be made available at the discretion of GSA through State agencies to appropriate public agencies and eligible nonprofit tax-exempt activities for a period of 21 calendar days following the period of Federal utilization as provided in § 101–49.202(a).

(b) Donations of gifts and decorations will be made for public display purposes and, in the case of books or manuscripts, for public display or reference purposes. Donations will be made in accordance with Part 101–44, except as otherwise provided in this Subpart 101–49.3.

**§ 101–49.302 Requests by public agencies and eligible nonprofit tax-exempt activities.**

Requests for donation of gifts and decorations to public agencies and eligible nonprofit tax-exempt activities shall be supported with a letter of intent, signed and dated by the authorized representative of the proposed donee, describing the intended use of the items and the manner in which they would be displayed or used for reference purposes. Donations of gifts and decorations will be accomplished by submitting for approval a Standard Form 123, Transfer Order Surplus Personal Property (see § 101–44.4901–123), to the General Services Administration (DP), Washington, DC 20406. The Standard Form 123 shall be prepared and distributed in accordance with the instructions in § 101–44.4901–123–1 and shall be conspicuously marked "FOREIGN GIFTS AND/OR DECORATIONS."

**§ 101–49.303 Allocation.**

Allocation of gifts and decorations will be made by GSA on a fair and equitable basis for the maximum public benefit. The following will be considered by GSA in effecting allocation and transfer of gifts and decorations among the States:

(a) Requests submitted through a State agency for a specific gift or decoration when the donee requesting the item has an association or relationship with the employee recipient. Such a request may be further supported by a letter from the employee recipient;

(b) Significance of the gift or decoration to the requesting donee;

(c) Requests submitted through a State agency by public museums;

(d) Quantity and value of the gifts or decorations;

(e) Prior receipt of similar items; and

(f) Other criteria as considered appropriate by GSA.

**§ 101–49.304 Conditions of donation.**

The State agency shall require the donee to agree in writing to the following special handling conditions and use limitations imposed by GSA on the donation of gifts or decorations:

(a) The donee, at its expense, shall be responsible for making arrangements for and removing the gift or decoration and for packing, handling, transportation, and reasonable insurance costs associated with the removal.

(b) The gift or decoration shall be used for public display purposes and, in the case of books or manuscripts, for public display or reference purposes at the times and in the manner as other similar items are displayed or used in the donee's exhibition or reference rooms. The gift or decoration shall not be used for the personal benefit of any individual.

(c) The donee shall place the gift or decoration into use for public display or reference purposes within 12 months following receipt and use the gift or decoration in accordance with this section for the following period of restriction after being placed in use:

(1) One year, for a gift valued at $100 or less;

(2) Three years, for a gift valued at more than $100 and less than $1,000, and decorations;

(3) Five years, for a gift valued at more than $1,000; or

(4) A period longer than 5 years when specified by GSA for any gift or decoration.

(d) The donee shall comply with all additional restrictions covering the handling and use of any gift or decoration imposed by GSA.

(e) For all gifts or decorations having a period of restriction of 5 years or longer, the donee shall, during the period of restriction, submit an annual report to GSA through the State agency. The report shall contain a description of the current condition and use of those gifts or decorations, and a certification that the donee is in compliance with the conditions of donation for all gifts or decorations that the donee has received.

(f) To determine whether the donee is complying with the conditions of the donation, the donee shall allows the right of access to the donee's premises at reasonable times for inspection of the

gift or decoration by duly authorized representatives of the Federal Government or the State agency.

(g) During the period of restriction, the donee shall not sell, trade, lease, lend, bail, encumber, cannibalize, or dismantle for parts or otherwise dispose of the property; or remove it permanently for use outside the State; or transfer title to the gift or decoration directly or indirectly; or do or allow anything to be done that would cause the gift or decoration to be seized, taken into execution, attached, lost, stolen, damaged, or destroyed.

(h) In the event the donee no longer desires to use the gift or decoration for public display or reference purposes as provided in this section during the period of restriction prescribed in paragraph (c) of this section, the donee shall notify the General Services Administration (DP), Washington, DC 20406, through the State agency and, upon demand by GSA, title and right to possession of the gift or decoration shall revert to the U.S. Government. In this event, the donee shall comply with transfer or disposition instructions furnished by GSA through the State agency, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or the Government as directed by GSA.

(i) Upon the donee's failure to comply with any of the above conditions, GSA may demand return of the gift or decoration and, upon demand, title and right to possession of the gift or decoration shall revert to the U.S. Government. In this event, the donee shall return the gift or decoration in accordance with instructions furnished by GSA, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or the Government as directed by GSA. If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee shall pay to GSA the fair market value of the gift or decoration at the time of this demand as determined by GSA. If the gift or decoration is damaged or destroyed, GSA may require the donee to (1) return the item and pay the difference between the fair market value of the item if it were not damaged or destroyed and the fair market value of the damaged or destroyed item, or (2) pay the fair market value of the item if it were not damaged or destroyed, as determined by GSA.

**§ 101-49.305 Costs incident to donation.**

Costs incurred incident to donation of gifts and decorations shall be handled in accordance with § 101-44.104.

**§ 101-49.306 Withdrawal of donable gifts and decorations for Federal utilization.**

Gifts and decorations set aside or approved for donation may be withdrawn for Federal utilization in accordance with § 101-44.101.

**§ 101-49.307 Donation of gifts withdrawn from sale.**

Gifts that are being offered for sale may be withdrawn and approved for donation in accordance with § 101-44.107.

## Subpart 101-49.4—Sale or Destruction of Foreign Gifts and Decorations

**§ 101-49.400 Scope of subpart.**

This subpart prescribes policies and procedures governing the disposal by sale or destruction of foreign gifts and decorations that GSA has determined are not needed for Federal utilization or donation.

**§ 101-49.401 Sale of gifts.**

Gifts will be sold by GSA as follows:

(a) Gifts will be offered through negotiated sales to eligible employee recipients who have indicated an interest in purchasing the items. (See § 101-49.201-1(a)(8).) The sales price will be the appraised value of the gifts plus the cost of the appraisal.

(b) Gifts that are not sold under paragraph (a) of this section will be sold in accordance with Part 101-45.

**§ 101-49.402 Approval of sales by the Secretary of State.**

The approval of the Secretary of State or the Secretary's designee shall be obtained before offering any gift for sale.

**§ 101-49.403 Responsibility for sale.**

GSA will be responsible for the sale of gifts. Sales will be conducted by or at the direction of the General Services Administration. Each employing agency shall cooperate fully with GSA in the sale of gifts in its custody.

**§ 101-49.404 Proceeds from sales.**

The proceeds from the sale of gifts shall be deposited in the Treasury as miscellaneous reciepts, unless otherwise authorized by law or regulation.

**§ 101-49.405 Destruction of gifts and decorations.**

Gifts that are not sold under this Subpart 101-49.4 and decorations may be destroyed and disposed of as scrap or for their material content.

Dated: September 6, 1979.

R. G. Freeman III,

*Administrator of General Services.*

[FR Doc. 79-28785 Filed 9-14-79; 8:45 am]

BILLING CODE 6820-96-M

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## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1033**

**[Service Order No. 1388-A]**

## Kent, Barry, Eaton Connecting Railway Co., Inc. Authorized To Operate Over Tracks Formerly Operated by Consolidated Rail Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Service Order No. 1388-A.

**SUMMARY:** Since the emergency no longer exists, Service Order Number 1388 is vacated effective 11:59 p.m., September 10, 1979.

**EFFECTIVE DATE:** September 10, 1979.

**FOR FURTHER INFORMATION CONTACT:** J. Kenneth Carter, (202) 275-7840.

**SUPPLEMENTARY INFORMATION:**

Decided: September 10, 1979.

Upon further consideration of Service Order No. 1388 (44 FR 44504), and good cause appearing therefore:

*It is ordered:* § 1033.1388 Service Order No. 1388 (Kent, Barry, Eaton Connecting Railway Company, Incorporated authorized to operate over tracks formerly operated by Consolidated Rail Corporation) is vacated effective 11:59 p.m., September 10, 1979.

(49 U.S.C. (10304-10305 and 11121-11126))

A copy of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Robert S. Turkington not participating.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-28739 Filed 9-14-79; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 44, No. 181
Monday, September 17, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## [14 CFR Part 39]

[Docket No. 71-WE-28-AD]

## McDonnell Douglas Model DC-9 and C-9 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) that would supersede an existing AD, which currently requires inspections, rework and replacement of main landing gear attach fittings. This amendment would expand the airplane applicability, modify and/or expand the accomplishment instructions, initial and repetitive inspections, preventative rework and mandatory replacement. This amendment is necessary to prevent failure of the main landing gear attach fittings.

**DATES:** Comments must be received on or before November 26, 1979.

**ADDRESSES:** Send comments on the proposal to:

Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The applicable service information may be obtained from:

The McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director, Publications & Training C1-750 (54-60).

**FOR FURTHER INFORMATION CONTACT:** Kyle L. Olsen, Executive Secretary Airworthiness, Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Interested persons are also invited to comment on the economic, environmental and energy impact that might result because of adoption of the proposed rule. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

This notice proposes to adopt a new airworthiness directive (AD) by superseding existing AD 72-02-03, Amendment 39-1378, as amended by Amendments 39-1399, 39-1766, and 39-3126, which currently require inspection, rework, and replacement of the main landing gear attach fittings on certain McDonnell Douglas Model DC-9 and C-9 series airplanes. After issuing Amendment 39-3126, the FAA has determined, based on service experience and engineering evaluation, that there exists a need to revise the effectivity and corrective action instructions in the AD to preclude possible detrimental cracking and subsequent failure of the main landing gear attach fitting(s).

FAA evaluation was prompted by reports of cracks occurring in serial number airplanes beyond the effectivity, and in locations other than those indicated by reference in the AD. Also, in two instances, fitting failures were attributed to existing cracks that were not detected during the prior inspections. The current visual (dye penetrant) inspection techniques are not considered adequate to detect small cracks in critical areas. The amendment provides for an alternate flourescent penetrant inspection, and boroscope, eddy current and ultrasonic inspection for critical areas. Instructions are also provided for cutting an access hole in the auxiliary spar web to facilitate inspection of the adjacent area of the fitting. The existing AD provides criteria for terminating action based upon crack size, location and rework (treatment), and mandatory replacement of fitting based upon crack location or size. The FAA has determined, after evaluation of the results of service experience, that these criteria should be revised. This amendment requires repetitive inspections for all 7079-T6 heat treatment material fittings, regardless of crack size, location or rework; terminating action permitted only on replacement of 7079-T6 fitting with 7075-T73 heat treat material fitting. Further, this amendment permits rework (blend-out) with repetitive inspections of small crack(s) at certain other locations which require mandatory replacement under the existing AD.

Subsequent to the issuing of Amendment 39-3126, the FAA has approved McDonnell Douglas Service Bulletin 57-125, Revision 2, dated August 24, 1979, which provides a revised airplane serial number effectivity list, criteria for initial and modified additional instructions, criteria for initial and repetitive inspections, rework, and mandatory replacement and terminating action.

Service Bulletin 57-125 is considered to meet the intent and requirements of Service Bulletins 57-86 and 57-88 incorporated by reference in AD 72-02-03, and Service Bulletins 57-76 and 57-101 which were not subject of the AD, but recommended corrective actions relative to the AD subject. Service Bulletin 57-125 also reflects those modified and additional requirements promulgated by the results of service experience subsequent to the issuance of and beyond the effectivity of Service Bulletins 57-86 and 57-88. Therefore, the FAA proposes to supersede Ad 72-02-03 with a new AD that will incorporate the substance of Ad 72-02-03, and provide additional and modified criteria for inspections, rework, replacement and terminating action.

### Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to Model DC-9 and C-9 series airplanes, fuselage numbers (F/Ns) 1 through 742, inclusive,

which correspond to the factory serial numbers listed in Douglas Service Bulletin No. 57–125, Revision 2, dated August 24, 1979. Hereinafter referred to as SB 57–125, Revision 2.

Compliance required as indicated.

To detect cracks and prevent failure on the main landing gear attach fittings, part numbers (P/Ns) 5911258, 5919289, and 5924841, accomplish the following:

(a) Within the next 1,000 hours time in service or 125 calendar days, whichever comes first, after the effective date of this AD, for fittings on airplanes F/N 1 through 414 which have not been shotpeened and the spot faces have not been sealed, and unless already accomplished, inspect the fittings per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2.

(b) Within the next 3,200 hours time in service or 375 calendar days, whichever comes first, after the effective date of this AD, for airplanes F/N 415 through 655, and for airplanes F/N 1 through 414 which have been shotpeened per AD 72–02–03, but the spot faces have not been sealed, and for those which have existing approved treated crack or approved crack rework, inspect the fittings per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2.

(c) Within the next 6,400 hours time in service or 750 calendar days, whichever comes first, after the effective date of this AD, for airplanes F/N 656 through 742, and for airplanes F/N 1 through 655 with uncracked fittings which have been shotpeened per AD 72–02–03, and the spot face is sealed per McDonnell Douglas DC–9 Service Bulletin 57–101, inspect the fittings per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2.

Note.—The Table and General Note 2 of the accomplishment instructions of SB 57–125, Revision 2, cover the schedules of paragraphs (a), (b), and (c).

(d) If cracks are found during the inspections of paragraphs (a), (b), or (c) in areas identified as Crack Locations 1, 3, 4, 6, and 19 which do not extend beyond the limits given in General Note 11 of the accomplishment instructions of SB 57–125, Revision 2, before further flight:

(1) Replace the fittings per Option 1 of SB 57–125, Revision 2, or

(2) Treat the cracks per Phases IV through VII of the accomplishment instructions in SB 57–125, Revision 2, and reinspect the fittings per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 3,200 hours time in service or 375 calendar days, whichever occurs first.

(e) If cracks are found during the inspections of paragraphs (a), (b) or (c) which meet any of the conditions of General Note 12 of the accomplishment instructions of SB 57–125, Revision 2, before further flight, replace the fittings per Option 1 of the Service Bulletin.

(f) If cracks are found during the inspections of paragraphs (a), (b) or (c) in areas identified as Crack Locations 8, 11, 13, 14, and 15 which are less than 1½ inches long and can be removed per the instructions on General Note 12.B of SB 57–125, Revision 2, or cracks in areas identified as Crack Locations 5 and 12 which are less than 1½ inches, or cracks in Location 17 which are less than ½ inch long, which can be removed per the instructions of General Note 12.D of SB 57–125, Revision 2, before further flight:

(1) Replace the fitting per Option 1 of SB 57–125, Revision 2, or

(2) Rework cracks per General Notes 12.B or 12.D, as applicable, of accomplishment instructions of SB 57–125, Revision 2, and reinspect the fitting per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 3,200 hours time in service or 375 calendar days, whichever comes first.

(g) For fittings which have been inspected per paragraphs (a), (b) or (c), which have not been modified per SB 57–125, Revision 2, Phase II or Phase III, or by an equivalent modification:

(1) Replace the fitting per Option 1 of SB 57–125, Revision 2, or

(2) If no cracks are found, reinspect the fitting per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 3,200 hours time in service or 375 calendar days, whichever comes first, or

(3) If no reworked cracks exist and/or no new cracks are found, and the preventative shotpeen and anti-corrosion rework of AD 72–02–03 has been accomplished, and the spot faces have been sealed in production or per SB 57–101, reinspect the fitting per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 6,400 hours time in service or 750 calendar days, whichever comes first, or

(4) If no reworked cracks exist and/or no new cracks are found, accomplish the preventative modification per Option 2, Phase II of SB 57–125, Revision 2, and reinspect the fitting per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 6,400 hours time in service or 750 calendar days, whichever occurs first, or

(5) If no reworked cracks exist and/or no new cracks are found, accomplish the preventative modification per Option 2, Phase III of SB 57–125, Revision 2, and reinspect the fitting per Option 2, Phase I, Figure 1 of SB 57–125, Revision 2, at intervals not to exceed 9,600 hours time in service or 1,125 calendar days, whichever occurs first.

(h) If cracks are found in locations in the fitting other than those identified in SB 57–125, Revision 2, before further flight, replace the fitting per Option 1 of SB 57–125, Revision 2, or rework in a manner approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(i) The requirements of this AD may be discontinued upon replacement of the existing 7079–T6 fitting with a new 7075–T73 fitting per Option 1 of SB 57–125, Revision 2.

(j) Accomplishment of any portion of the rework outlined in McDonnell Douglass DC–9 Service Bulletins 57–76, 57–86, 57–88 and 57–101 required by AD 72–02–03, and which is also outlined in SB 57–125, may be considered as equivalent to that requirement of this AD.

(k) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(l) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(m) Upon request of operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region, may adjust the initial and repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in interim Department of Transportation Guidelines.

Issued in Los Angeles, California on September 6, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28694 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

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[14 CFR Part 39]

[Docket No. 79–WE–26–AD]

## Pacific Scientific Co.—Rotary Buckle Restraint Systems

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD) that would require removal from service of certain Pacific Scientific Company rotary buckles used in crew and attendant aircraft seat restraint systems. This AD is required because of failure of the rotary buckle to open under emergency conditions with possible entrapment of occupant.

**DATES:** Comments must be received on or before November 26, 1979.

**ADDRESSES:** Send comments on the proposal to:

Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The applicable service information may be obtained from:

Pacific Scientific Company, Kin-Tech Division, 1346 South State College Boulevard, Anaheim, California 92803.

**FOR FURTHER INFORMATION CONTACT:** Jerry Presba, Executive Secretary Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Interested persons are also invited to comment on the economic environmental and energy impact that might result because of adoption of the proposed rule. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules docket.

The FAA has learned of a case of an agricultural applicator helicopter operator who was unable to effect release of the rotary buckle restraint system in a post-crash situation. This unsatisfactory condition is attributed to the fact that the belt and harness tongues can jam between the handle and body plate of the rotary buckle assembly, preventing rotation of the handle.

This condition is likely to exist on other rotary buckles of the same type design. Rotary buckles manufactured by Pacific Scientific Company subsequent to 1970 are of a different type design which is not subject to jamming.

## Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Pacific Scientific Company Kin-Tech Division: Applies to Pacific Scientific Restraint Systems rotary buckles manufactured through 1970.

Compliance required within one hundred eighty (180) days from the effective date of this AD.

To prevent failure to open of the flight crew and attendants' seat belts, accomplish the following:

a. Inspect crew and attendants' restraint systems to determine if a Pacific Scientific rotary buckle is installed.

b. If installed, determine if the rotary buckle assembly contains a black body plate assembly as identified in Figure I of the AD. No further action is required per this AD if the rotary buckle assembly includes a black body plate assembly.

c. Those restraint systems incorporating Pacific Scientific rotary buckles without a black body plate assembly as specified in Figure I of this AD:

1. Substitution of any approved restraint system not incorporating the above described rotary buckle; or,

2. Replacement of the buckle element of the restraint system with a Pacific Scientific buckle element incorporating a black body plate assembly as identified in Figure I of this AD.

Note.—Pacific Scientific Service Bulletin 1101550-25-11 Revision "A" dated August 2, 1979 pertains to this subject.

d. Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

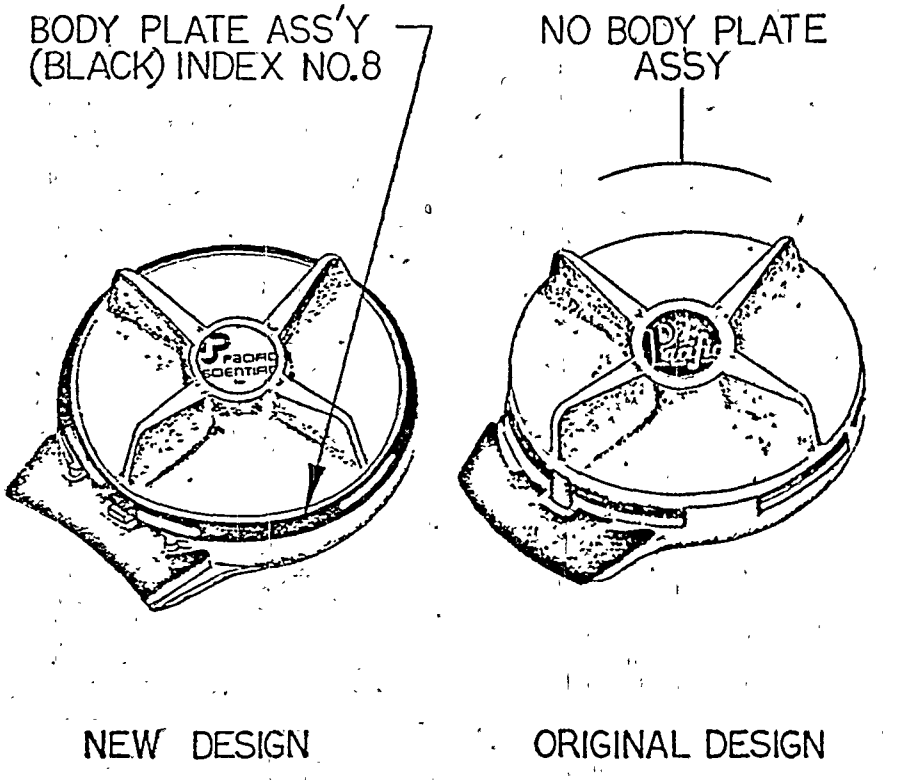


FIGURE 1

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in Department of Transportations Guidelines.

Issued in Los Angeles, California on September 7, 1979.

William R. Krieger,

*Acting Director, FAA Western Region.*

[FR Doc. 79-28695 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

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[14 CFR Part 71]

[Airspace Docket No. 79-CE-27]

## Transition Area—Beloit, Kans.; Proposed Designation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rule Making (NPRM).

**SUMMARY:** This Notice proposes to designate a 700-foot transition area at Beloit, Kansas, to provide controlled airspace for aircraft executing a new VOR/DME instrument approach procedure to the Beloit, Kansas Municipal Airport, utilizing the Mankato, Kansas VORTAC as a navigational aid.

**DATES:** Comments must be received on or before October 20, 1979.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Benny J. Kirk, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before October 20, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR § 71.181) by designating a 700-foot transition area at Beloit, Kansas. To enhance airport usage, a new VOR/DME instrument approach procedure to the Beloit, Kansas Municipal Airport is being established utilizing the Mankato, Kansas VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid, entails designation of a transition area at Beloit, Kansas at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442), by adding the following new transition area:

Beloit, Kans.

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Beloit Municipal Airport (latitude 39°28'13" N.; longitude 98°07'48" W.), and within 2.5 miles each side of the Mankato, Kansas VORTAC 161° R., extending from the 5-mile radius area to 7 miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on September 5, 1979.

John E. Shaw,

*Acting Director, Central Region.*

[FR Doc. 79-28689 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

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[14 CFR Part 71]

[Airspace Docket No. 78-WA-14]

## Proposed Establishment of an Area Navigation Route; Proposed Designation of VOR Airway Segments; and Proposed Extension of Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate two airway segments north of Molokai and Maui, Hawaii, and also to enlarge the Hawaiian Islands 5,500 feet transition area out to the new Honolulu FIR/Oceanic CTA boundary. This action would help to reduce the congestion on the present routes northeast of Hawaii and improve the air traffic flow to and from Hawaii.

**DATES:** Comments must be received on or before October 15, 1979.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Director, FAA Pacific Region, Attention: Chief, Air Traffic Division, Docket No. 78-WA-14, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813. All communications received on or before October 15, 1979 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

## Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

## The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would make the following changes:

1. Add a separate route segment to V-7 from the INT of Koko Head, Hawaii, 050°T(039°M) and Molokai, Hawaii, 358°T(347°M) radials to the INT of Molokai 358°T(347°M) and the Honolulu FIR/Oceanic CTA boundary.

2. Add a separate route segment to V-17 from the INT of Koko Head, Hawaii, 071°T(060°M) and Maui, Hawaii, 348°T(337°M) radials to the INT Maui, 348°T(337°M) and Lihue, Hawaii, 065°T(054°M) radials.

3. Enlarge the Hawaiian Islands 5,500 feet transition area from the former boundary of the Honolulu FIR/Oceanic CTA to its present location.

These actions would help to improve the traffic flow and reduce the congestion by providing additional northeast arrival and departure routes. The additional 5,500 feet of controlled airspace will provide for domestic type of control to the Oceanic Control boundary.

## ICAO Considerations

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertains to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.127 and § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 343, 442) as follows:

In § 71.127, under V-7 "From INT Koko Head 050° and Molokai 358° radials to INT Molokai 358° and the Honolulu FIR/Oceanic CTA boundary." is added.

Under V-17 "From INT Koko Head 071° and Maui 348° radials to INT Maui 348° and Lihue 065° radials." is added.

In § 71.181, under Hawaiian Islands, all before "and the airspace upward from 1,200 feet" is deleted and "The airspace extending upward from 5,500 feet above the surface within an area bounded by a line beginning:
at Lat. 23°57'N., Long. 160°46'W.;
to Lat. 24°19'N., Long. 157°17'W.;
to Lat. 24°03'N., Long. 156°19'W.;
to Lat. 23°32'N., Long. 155°29'W.;
to Lat. 23°00'N., Long. 154°39'W.;
to Lat. 22°22'N., Long. 153°53'W.;
to Lat. 21°43'N., Long. 153°09'W.;
to Lat. 20°49'N., Long. 153°00'W.;
to Lat. 20°16'N., Long. 152°14'W.;
to Lat. 19°14'N., Long. 151°54'W.;
to Lat. 18°19'N., Long. 157°49'W.;
to Lat. 18°26'N., Long. 158°54'W.;
to Lat. 18°53'N., Long. 159°53'W.;
to Lat. 19°32'N., Long. 160°36'W.;
to Lat. 20°06'N., Long. 161°52'W.;
to Lat. 21°01'N., Long. 162°14'W.;
to Lat. 21°56'N., Long. 162°29'W.;
to Lat. 22°50'N., Long. 162°14'W.;
to Lat. 23°32'N., Long. 161°35'W.;
to the point of beginning;" is substituted therefor.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a) and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.65.))

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on September 7, 1979.

William E. Broadwater,

*Chief, Airspace and Air Traffic Rules Division.*

[FR Doc. 79-28617 Filed 9-14-79; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## [18 CFR Parts 2, 271]

## [Docket No. RM79-67]

## Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978; Public Hearing

Issued: September 13, 1979.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** On August 4, 1979 the Federal Energy regulatory Commission (Commission) issued a Notice of Proposed Rulemaking to amend Parts 2 and 271 of its Regulations, 44 FR 49468 (Aug. 23, 1979). The proposed amendments would provide for special relief procedures under Natural Gas Policy Act (NGPA) pricing provisions. Notice is hereby given that a public hearing will be held with respect to this proposal on September 26, 1979, in Washington, D.C.

**DATES:** Request to participate by September 24, 1979; hearing date, September 26, 1979.

**ADDRESSES:** Requests to participate should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should reference Docket No. RM79-67.

**HEARING LOCATION:** Offices of the Civil Aeronautics Board, 1875 Connecticut Avenue, N.W., Washington, D.C., Hearing Room D (North Building).

**FOR FURTHER INFORMATION CONTACT:** Jane Phillips, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8104-B, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8162

**SUPPLEMENTARY INFORMATION:** The hearing is being held pursuant to the requirements of Section 502(b) of the NGPA that "to the maximum extent practicable, an opportunity for oral presentation of data, views and arguments" be afforded with respect to proposed rules (with certain exceptions) under the NGPA. The hearing will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. However, staff may question persons making presentations, and persons may submit to the presiding officer questions to be asked of those making presentations. The presiding officer will determine whether the questions so submitted are relevant and whether time permits their presentation. Any further procedural rules will be announced by the presiding officer at the hearing. The hearing will be continued on the following day, if necessary, at the same location.

Requests to participate in the hearing should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should be made no later than September 24, 1979. Requests should reference Docket No. RM79-67 and should indicate the amount of time required for the oral presentation and the name, representation, and telephone number of the person who will participate.

Participants should, if possible, bring 50 copies of their presentation to the hearing. A list of the participants will be available in the Commission's Office of Public Information three days before the hearing and at the place of hearing on the morning of the hearing.

A transcript will be made of the hearing and it will be made part of the public file of Docket No. RM79-67.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-28806 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF THE TREASURY

## Customs Service

## [19 CFR Part 177]

## [061120]

## Watches and Watch Movements; Tariff Classification Under General Headnote 3(a), Tariff Schedules of the United States: Change of Practice Considered

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed change of practice.

**SUMMARY:** This document gives notice that the Customs Service has been reviewing the current practice of according duty-free treatment to watches and watch movements pursuant to General Headnote 3(a), Tariff Schedules of the United States (TSUS). The Customs Service has ruled that certain watches and watch movements assembled in the insular possessions from foreign watch subassemblies and parts satisfy the "manufactured or produced" requirements of General Headnote 3(a), TSUS. The Customs Service is contemplating a change of this practice. If the practice is changed, watches and watch movements which are not subjected to sufficient processing in the insular possessions would be dutiable pursuant to subpart E, part 2, schedule 7, TSUS.

**DATES:** Comments must be received on or before November 16, 1979.

**ADDRESS:** Comments should be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Larry L. Burton, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5727.

**SUPPLEMENTARY INFORMATION:**

### Background

Under a uniform and established practice, the Customs Service accords duty-free treatment to importations of certain watches and watch movements from the insular possessions, pursuant to General Headnote 3(a), (TSUS).

### General Headnote 3(a), TSUS

Under General Headnote 3(a), TSUS, watches and watch movements imported from an insular possession may enter the Customs territory of the United States free of duty if they:

(1) Are manufactured or produced in the possession;

(2) Do not contain foreign materials which represent more than 70 percent of their total value; and

(3) Come directly to the Customs territory of the United States from the possession.

In order to satisfy the "manufactured or produced" requirements of General Headnote 3(a), TSUS, Customs has ruled that a new and different article of commerce must result from the operations performed in the insular possession.

The insular possessions include the Virgin Islands, American Samoa, and Guam. The Customs territory of the United States includes the 50 States, the District of Columbia, and Puerto Rico.

General Headnote 3(a), TSUS, embodies a legislative intent to promote the growth of the economies of the insular possessions by stimulating the development of light industry, such as watch assembly. (S. Rept. No. 94-273,

94th Cong., 1st sess. (1975), reprinted in 1975 United States Code Cong. & Ad. News at 884, et seq.).

On December 11, 1978, a notice was published in the Federal Register (43 FR 57921) stating that the Customs Service was considering a change in the practice of affording duty-free treatment to certain watches and watch movements imported from the insular possessions. In particular, concern was expressed regarding "low labor" watches and watch movements which are subject to limited processing in the insular possessions. When the value added in direct labor costs in the possessions is as little as 10 percent of the cost of the foreign components, a question is raised as to whether the watch or watch movement is being "manufactured or produced" in the possessions, as required by law.

Of the comments received in response to the December 11 proposal, several expressed the opinion that assemblers of watch movements in the insular possessions should be required to assemble their products using from between twenty-five and thirty-four discrete components, or, be required to pay between seventy-five cents and one dollar in the insular possessions for labor costs per completed unit.

We do not favor adoption of either the assembly from a number of discrete components formulation, or the value added approach. We believe the separate components method is inappropriate because it sets an inflexible standard which may not have application to quartz analog technology. Moreover, if applied to each unit of production, the separate components standard may be too stringent a standard and could result in adverse consequences for the insular economy. The value added formula would also present some problems. A specific value added amount would be affected by inflation whereas a percentage amount would favor the low labor watch industry.

One comment suggests that Congress was aware of so-called low labor watch movement assembly operations at the time the General Headnote 3(a) provisions were promulgated, and that Congress intended to accord them duty-free treatment. It is stated that the change of practice contemplated by the Customs Service would be contrary to that legislative intent.

We do not concur with the view that the intent of the legislature was to create a vehicle for duty-free entry of watch movements. Rather, it is our interpretation that the Congressional intent behind enactment of the 3(a) provision was that the industry and economy of the insular possessions be stimulated.

### Proposed Change of Practice

The Customs Service proposes the following objective measures for determining whether a movement assembled in the insular possessions has been the subject of a sufficient manufacturing process;

A. for conventional balance wheel and hairspring watch movements, of the following major assembly operations, no fewer than two must be performed in full in the insular possessions:

1. Assembly of escapement.
2. Assembly of gear train.
3. Assembly of winding and setting mechanism.
4. Assembly of barrel mechanism.

B. For electronic quartz watch movements, of the following major assembly operations, no fewer than two must be performed in full in the insular possessions:

1. Assembly of coil-support and circuit.
2. Assembly of train.
3. Assembly of function control, dial-side train assembly, and setting mechanism.
4. Assembly of power source.

The Customs Service is also reconsidering the present practice of applying the Headnote 3(a) tests separately to watch movements and cases. Under the Tariff Act of 1930, movements and cases were classifiable separately and there was no provision for watches. The Department of Commerce has suggested that, under the present tariff schedules, the watch movement and case possibly could be treated as a single entity for the purpose fo General Headnote 3(a).

### Comments

The Customs Service will review written comments submitted, and will publish details of a new practice is warranted.

Consideration will be given to any written comments submitted to the Commissioner of Customs, preferably in triplicate. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, room 2335, 1301 Constitution Avenue N.W., Washington, D.C.

Authority: This notice is published pursuant to section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and section 177.10(c), of the Customs Regulations (19 CFR 177.10(c)).

### Drafting Information

The principal author of this notice was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the U.S. Customs Service participated in developing this notice, both on matters of substance and style.

R. E. Chasen,
*Commissioner of Customs.*

Approved: August 13, 1979.

Richard J. Davis,
*Assistant Secretary of the Treasury.*

[FR Doc. 79-28746 Filed 9-14-79; 8:45 am]
BILLING CODE 4810-22-M

## NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

**[25 CFR Part 700]**

## Commission Operations and Relocation Procedures; Revision of Regulations Regarding Commission Hearings

**AGENCY:** Navajo and Hopi Indian Relocation Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This notice proposes revisions in the Commission Hearings regulations which will establish formal grievance procedures for Commission determinations.

**DATE:** Comments must be received on or before October 17, 1979.

**ADDRESS:** Navajo and Hopi Indian Relocation Commission 2717 N. Steves Boulevard, Bldg. A Flagstaff, Arizona 86001

**FOR FURTHER INFORMATION CONTACT:** Paul M. Tessler, (602) 779-3311, Extension 1376; FTS: 261-1376

**SUPPLEMENTARY INFORMATION:** The principal author is William G. Gavell, Field Solicitor, Valley Bank Center, Suite 2080, 201 N. Central Avenue, Phoenix, Arizona 85073. The Commission proposes to revise its regulations concerning Commission Hearings for reasons that the regulation is both constitutionally inadequate and does not conform to the requirements of the Administrative Procedures Act, 5 U.S.C. 700, et. seq. Accordingly, the following section of 25 CFR Part 700 § 700.8 is proposed to be revised as follows:

**§ 700.8 Grievance procedures.**

(a) *Initial Commission determinations.* Initial Commission determinations concerning individual eligibility or benefits shall be made by the Certifying Officer pursuant to Commission policy and with the

assistance of staff. Such determinations shall be communicated to the applicant by certified letter. An oral conference will be scheduled at the request of the applicant. Communications of determinations to the applicant shall include an explanation of the availability of grievance procedures.

(b) *Availability of hearings.* All persons aggrieved by Initial Commission determinations concerning eligibility or benefits may request a Hearing to present evidence and argument concerning the determination. Parties seeking such relief from the Commission's initial determination shall be known as "applicants."

(c) *Requests for hearings.* Hearing requests may be made in person or by letter and must be received by the Commission within thirty days after the notice letter was mailed or the oral conference was held, unless good cause is shown for an extension of that time limit.

(d) *Hearings Officers.* Hearings will be conducted by the Hearing Officer appointed for this purpose by the Commissioners: *Provided,*

That the individual(s) directly responsible for the initial determination being appealed shall not be eligible to serve as Hearing Officers.

(e) *Hearing scheduling.* Hearings will be held as scheduled by the Hearing Officer. (1) Notice to the applicant will be provided at least five days prior to the hearing stating the date, time, place, and scope of the hearing. (2) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this time limit is extended upon showing of good cause. (3) All hearings shall be conducted at the Commission offices in Flagstaff, Arizona, unless otherwise designated.

(f) *Evidence and Procedure.* (1) The applicant has a right to:

(i) Be represented by a lawyer or other representative, who once identified, shall receive copies of all correspondence and written communication to the applicant and shall be deemed as acting for the applicant when submitting any request, brief, or communication to the Commission therefor;

(ii) Present evidence, witnesses, and argument;

(iii) Have produced Commission evidence relative to the determination at issue, and employees possessing knowledge material thereto;

(iv) Examine and/or cross-examine all witnesses;

(v) A transcript of the hearing on request and upon payment of appropriate Commission fees.

(2) The Hearing Officer is empowered to:

(i) Adminster oaths and affirmations to witnesses;

(ii) Receive relevant evidence;

(iii) Regulate the course and conduct of the Hearing;

(iv) Have a record made of the proceedings.

(g) *Post-hearing briefs.* The applicant may submit post-hearing briefs or written comments to the Hearing Officer within two weeks after conclusion of the Hearing.

(h) *Hearing Officer decisions.* (1) The Hearing Officer shall submit to the Commission written findings of fact, conclusions of law, and decision based on all the evidence and argument presented, within thirty days after conclusion of the Hearing.

(2) Copies of the Hearing Officer's findings of fact, conclusions of law, and decision shall be provided to the applicant. The applicant may submit briefs or other written argument to the Commission within two weeks of the date of the Hearing Officer's determination was mailed to them.

(i) *Final Agency action.* After receipt of the Hearing Officer's decision and the applicant's post-decision briefs or written argument, if any, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; copies thereof shall be sent by certified mail to the applicant.

(j) *Direct appeal to Commissioners.* Commission determinations concerning issues other than individual eligibility or benefits may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Sandra Massetto,

*Chairperson, Navajo and Hopi Indian Relocation Commission.*

[FR Doc. 79-28777 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-HB

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1316-4]

## State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (on Control Techniques Guidelines)

**AGENCY:** Environmental Protection Agency.

**ACTION:** General preamble for proposed rulemaking—Supplement.

**SUMMARY:** Provisions of the Clean Air Act enacted in 1977 require states to revise their State Implementation Plans for all areas that have not attained National Ambient Air Quality Standards. States are to have submitted the necessary plan revisions to EPA by January 1, 1979. The Agency is now publishing proposals inviting public comment on whether each of the submittals should be approved. These are followed by final actions on the submittals. In the April 4, 1979 issue of the Federal Register, EPA published a General Preamble identifying and summarizing the major considerations that will guide EPA's evaluation of the submittals (44 FR 20372). This was followed by a correction of a typographical error on April 30 (44 FR 25243) and Supplements on July 2 (44 FR 38583) and August 28 (44 FR 50371). Today's Supplement provides further discussion on Control Techniques Guidelines for stationary sources of volatile organic compounds.

*For Further Information Contact:* The appropriate EPA regional office listed on the first page of the April 4, 1979 General Preamble (44 FR 20372) or the following headquarters office: G. T. Helms, Chief, Control Programs Operations Branch, Control Programs Development Division, EPA Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5365 or 541-5226.

*Public Comment:* As explained in the April 4 General Preamble, EPA Regional Administrators are publishing Federal Register proposals inviting comment on whether the individual plan submittals should be approved. The General Preamble, the July 2 Supplement, the August 28 Supplement, and this Supplement are notices of proposed rulemaking, applicable to each decision by EPA whether to approve a state plan submittal. EPA's final action will be in the form of a ruling approving or disapproving the individual plan submittal. If the discussion in this Supplement requires alteration of any comments on a plan for which the comment period has already ended, the commenter should contact the appropriate EPA Regional Office immediately so that the issue can be appropriately resolved.

*Supplementary Information:* General background information is set out at length in the April 4 General Preamble. This Supplement provides further discussion on the Control Techniques Guidelines (CTGs) issued by EPA for sources of volatile organic compounds (VOC). (VOC is a chemical precursor of

ozone, and is therefore controlled in plans for the ozone ambient standard).

In several proposals involving particular state plan submittals, EPA has stated that the submitted regulations for control of sources of VOC were not supported by the information in the CTGs. Where EPA noted a problem, the Agency proposed that the State would have to provide an adequate demonstration that its regulations represent reasonably available control technology (RACT), or amend the regulations to be consistent with the information in the CTGs. The purpose of the following discussion is to explain generally the legal and policy considerations supporting these proposals, and to discuss in general the purpose of the CTGs.

1. *RACT for Ozone Plans.* In the 1977 amendments to the Clean Air Act, Congress specified that, in order for a state implementation plan (SIP) to satisfy the requirements of Part D of Title I of the Act (Part D), the SIP must provide for application of all reasonably available control measures, which includes RACT for all stationary sources.[1] In using the term "reasonably available control technology," Congress apparently adopted EPA's pre-existing conception of the term.[2]

EPA has defined RACT as: The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[3] RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.

EPA regulations provide that less stringent emission limitations than those achievable with RACT are acceptable only if the State plan shows that the less stringent limitations are sufficient to attain and maintain national ambient air quality standards, and show reasonable further progress during the interim before attainment.[4] Otherwise, RACT limitations are required, as discussed in detail in the April 4 General Preamble.[5]

2. *EPA's Control Techniques Guidelines.* In the 1977 amendments to the Act, Congress instructed States to begin revising their plans to assure attainment of standards, and also instructed EPA to prepare guidance material to assist states in their efforts to develop ozone plans. While EPA's main effort was to prepare material on control of transportation sources, Congress also required the Agency to publish, and make available to State air pollution control agencies, information on control of emissions from non-transportation sources including fuel transfer and storage operations and operations using solvents.[6] Congress stated its intent that these documents were "to be a basic resource available to State and local governments in determining the measures to be included in plans to achieve and maintain the national ambient air quality standards."[7] While deliberating on the 1977 amendments to the Act containing these specific instructions, Congress was aware that EPA had already begun preparing a series of CTGs to provide guidance to States and industry on controlling stationary sources of VOC.[8]

Each CTG describes techniques available for reducing emissions of VOC from a category of sources, and states recommended levels of control. There were 11 such CTG's published before January 1978, and 9 published during 1978. EPA intends the CTG's to serve the following functions:

a. *Informing the States.* The primary purposes of each CTG is to inform the State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from the class of sources covered by the CTG. This information, involving the capabilities and problems general to the industry, should be useful to both control agencies and industry in developing needed emission limitations for stationary sources within the State.

b. *Establishing the Deadline for Submitting SIP Requirements.* EPA believes that States will be able to make more technologically sound decisions in adopting emission limitations if they are permitted to defer adoption until after the information in the CTGs is available. Therefore, EPA has stated that a SIP revision due January 1, 1979 is acceptable if it includes necessary emission limitations for source categories covered by CTGs published by January 1978.[9] Emission limitations for source categories covered by CTGs published between January 1978 and January 1979 must be adopted and submitted to EPA by July 1, 1980.[10]

c. *Recommendation to States.* Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry. Where the States finds the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.[11]

However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In many cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.

The presumptive norm is only a recommendation. For any source of group of sources, regardless of whether they fall within the industry norm, the

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[1] Sections 172(b)(2)–(3) of the Act (42 U.S.C. 7502(b)(2)–(3)).

[2] Congress did not adopt its own definition of "RACT," and was well aware of how EPA used the term. *See, e.g.,* Hearings on H.R. 4151, H.R. 4758, and H.R. 4444 before the Subcommittee on Health and Environment of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., Part 2 at 1806, 1825 (Serial No. 95–59, March 8–11 and April 18, 1977).

[3] EPA articulated its definition of RACT in a memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, Regions I–X, on "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas," section 1.a (December 9, 1976), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210 col. 2; and in EPA's publication *Workshop on Requirements for Non-attainment Area Plans—Compilation of Presentations* 154 (OAQPS No. 1.2–103, revised edition April 1978).

[4] 40 CFR 51.1(o)(1). The regulations refer only to attainment and maintenance. The analogous requirement for the SIP to show reasonable further progress was established by the 1977 amendments. *See* 44 FR 20375 col. 3 (April 4, 1979).

[5] 44 FR 20375–20377.

[6] Section 108(f)(1)(A)(ii) of the Act (40 USC 7408(f)(1)(A)(ii).

[7] Report to accompany S. 252, S. Rep. No. 95–127, 95th Cong., 1st Sess. 24, (May 10, 1977).

[8] *See* Hearings, note 2 above, Part 2 at 1427–32. EPA's authority to publish information and recommended levels of control is provided by section 103(b)(1) (40 USC 7403(b)(1)), which generally authorizes EPA to publish "information, including appropriate recommendations" to assist air pollution control agencies, in addition to section 108(f)(1)(A)(ii).

[9] 44 FR 20376 col. 3 (April 4, 1979); 43 FR 21670 (May 3, 1978).

[10] *See* memorandum from David G. Hawkins, EPA Assistant Administrator for Air, Noise and Radiation, to Regional Administrator, Regions I–X, on "State Implementation Plans/Revised Schedules for Submitting Reasonably Available Control Technology Regulations for Stationary Sources of Volatile Organic Compounds (VOC)" (August 22, 1979). The July 1, 1980 deadline is six months later than the deadline EPA had announced in the statements cited in footnote 9. Since the process of adopting regulations appears more lengthy than first anticipated, additional time may be necessary to accommodate public, administrative, and legislative review.

Adoption of emission limitations may not be deferred until after publication of CTGs where deferral would result in failure to achieve reasonable further progress. *See* 44 FR 20377 n. 25 (April 4, 1979).

[11] Or requirements that deviate imperceptibly (e.g., up to 5 percent less control) from the recommended presumptive norm.

State may develop case-by-case RACT requirements independently of EPA's recommendation. EPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT, based on the economic and technical circumstances of the particular sources being regulated.

d. *Basis for the EPA Decision on Approval.* EPA sought information from the relevant industries in preparing the CTGs, and EPA believes that the information in the CTGs is highly relevant to the decision whether to approve State regulations. For SIPs that must include RACT limitations, each CTG will be part of the rulemaking record on which EPA's decision will be based.[12] However, the CTG does not establish conclusively how issues must be resolved. In reviewing an individual regulation, EPA will consider not only the information in the CTG, but also any material included in the State submittal and in public comments on the submittal.

For emission limitations that are consistent with the information in the CTGs, therefore, the State may be able to rely solely on the information in the CTG to support its determination that the adopted requirements represent RACT. Where this is not the case, EPA believes that the State must submit justification of its own, to support its determination. EPA will then consider the information submitted by the State, together with the information in the CTG and public comment.

Note: Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110(a), 172, Clean Air Act, as amended (42 U.S.C. 7410(a), 7502)).

Dated: September 5, 1979.

David G. Hawkins,

*Assistant Administrator for Air, Noise and Radiation.*

[FR Doc. 79-28799 Filed 9-14-79; 8:45 am]

BILLING CODE 6560-01-M

[12] This is what was meant by EPA's statement that "the criteria for SIP approval rely heavily upon the information contained in the CTG." 44 FR 21676 (May 19, 1978).

# Notices

Federal Register
Vol. 44, No. 181
Monday, September 17, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### Hugh Watson Stockyard, Gainesville, Ga., et al.; Proposed Posting of Stockyards

The Chief, Registrations, Bonds and Reports Branch, Packers and Stockyards, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

GA-189: Hugh Watson Stockyard, Gainesville, Georgia.
IA-255: Mahaska Sale Co., Oskaloosa, Iowa.
MO-247: Douglas County Livestock Auction, Inc., Ava, Missouri.
NC-158: Elizabethtown Livestock Market, Elizabethtown, North Carolina.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds and Reports Branch, Packers and Stockyards, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, by October 2, 1979.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 10th day of September 1979.

Edward L. Thompson,
*Chief, Registrations, Bonds and Reports Branch, Livestock Marketing Division.*

[FR Doc. 79-28726 Filed 9-14-79; 8:45 am]
BILLING CODE 3410-02-M

## Federal Crop Insurance Corporation

### Compilation of Data; Invitation for Public Comment—Various Crops

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Prenotice; Solicitation of comments.

**SUMMARY:** The Federal Crop Insurance Corporation is seeking comments from concerned segments of the general public to aid in compiling data for study relative to insurance on various crops.

**EFFECTIVE DATE:** Written comments, data, and views must be submitted by not later than January 15, 1980, to be sure of consideration.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

**SUPPLEMENTARY INFORMATION:** The Federal Crop Insurance Corporation (FCIC), under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), presently offers crop insurance on 26 commodities. For some time, the Corporation has been receiving requests from various interested growers and grower associated groups to have certain crops considered for insurance coverage. It has been determined that information on certain crops from those who produce and market the commodity would be an excellent source of study in its considerations of insurance procedures.

For this reason, the Federal Crop Insurance Corporation hereby serves notice that it is contemplating formulation of procedures for insuring various crops not now covered by any of its insurance programs and is actively seeking input from growers, grower associations, and any other interested parties for the purpose of studying possible insurance procedures that will be of greatest benefit to future farmer-policyholders. While no definite schedule can be predicted for the implementation of such programs, this type of advance study is essential and should be undertaken as soon as possible.

Listed below are several crops not now being insured by the Corporation which will be reviewed first since they represent those crops in which the greatest interest has been expressed for insurance while being a major, yet unprotected, source of agricultural production.

All growers, grower associations, marketing interest groups, and other interested parties are urged to submit any information, views, or data they consider important toward the formulation of crop insurance procedures.

Written comments, views, and data should be forwarded to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, by not later than January 15, 1980, in order to be sure of being considered.

All written submissions made pursuant to this notice will be available for public inspection in the office of the Manager during regular working hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

The crops for primary consideration are:

1. Almonds
2. Vegetables
3. Blueberries
4. Popcorn

When forwarding comments on one or more of these crops, the crop name should head the comments for easy identification.

While the crops listed above are of primary consideration, any information, views, or data on other crops for consideration by the Board of Directors will, of course, be welcomed.

This notice of request for information has no restrictions and is open to all segments of the general public.

Dated: September 10, 1979.

Peter F. Cole,
*Secretary, Federal Crop Insurance Corporation.*

[FR Doc. 79-28778 Filed 9-14-79; 8:45 am]
BILLING CODE 3410-08-M

## Office of the Secretary

### Change in Boundaries of National Forests; Jefferson and George Washington National Forest, Ky., Va., and W. Va.; Correction

[In FR Docs. 79-16384 and 79-16385 appearing at pages 30391 and 30395] in the Federal Register of May 25, 1979, the following changes should be made:

1. On page 30391, under the section in heading Unit II, column 3, line 12, the word "Rathold" should be corrected to read "Rathole."

2. On page 30392, column 2, line 18, the word "Poglesong" should be corrected to read "Foglesong."

3. On page 30394, column 2, lines 30 and 31, should be corrected to read as follows:

County, Kentucky and Buchanan County, Virginia; thence.

On page 30397, column 1, line 6, the word "of" should be corrected to read "to."

5. On page 30397, column 1, line 18, Route "#668" should be corrected to read Route "#688."

6. On page 30397, column 1, line 26, Tract "#448A" should be corrected to read Tract "#488A."

On page 30397, column 2, under Unit II (Blue Ridge Mountain Section) line 38, the word "Cornwell" should be corrected to read "Cornwall."

8. On page 30397, column 3, line 29, the word "Corner 27" should be corrected to read "Corner 37."

9. On page 30398, column 1, line 37, the word "pont" should be corrected to read "point."

10. On page 30398, column 2, line 7, the word "thense" should be corrected to read "thence."

Dated: September 10, 1979.

M. Rupert Cutler,

*Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 79-28727 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-11-M

## Packers and Stockyards Administration

### Bloomington Sale Barn, Bloomington, Ind., et al.; Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

*Facility No., Name, Location of Stockyard, and Date of Posting*

IN—102, Bloomington Sale Barn, Bloomington, Ind., Sept. 23, 1959.
IN—107, Crawfordsville Live Stock Commission, Crawfordsville, Ind., Apr. 7, 1964.
IN—153, Evansville Livestock Sale Pavilion, Evansville, Ind., June 1, 1974.
IN—116, Huntington Livestock Sales Company, Huntington, Ind., May 22, 1959.
IN—119, Producers Marketing Assn., Inc., Lafayette, Ind., Apr. 27, 1959.
IN—125, Producers Marketing Assn., Inc., Montpelier, Ind., Apr. 27, 1959.
IN—139, Southern Indiana Livestock Exchange, Scottsburg, Ind., Nov. 19, 1965.
KY—108, Cynthiana Live Stock Sales Company Yards, Cynthiana, Ky., Mar. 2, 1931.
KY—138, The Farmers Stockyard Company, Mt. Sterling, Ky., Oct. 19, 1966.
KY—141, Murray Livestock Co., Murray, Ky., Dec. 10, 1959.
MO—103, Ava Sales Company, Ava, Mo., May 27, 1959.
MO—179, Farmers and Traders Commission Co., Inc., Palmyra, Mo., May 20, 1959.
NB—169, Morris Livestock Auction, Plattsmouth, Nebr., Apr. 25, 1959.
NB—180, Syracuse Sales Pavilion Co., Inc., Syracuse, Nebr., June 5, 1959.
TX—274, Southwest Livestock Exchange, Inc., Uvalde, Tex., June 12, 1957.

Notice or other public proceedure has not proceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the Federal Register. This notice shall become effective upon publication in the Federal Register.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 11 day of September, 1979.

Edward L. Thompson,

*Chief, Registrations, Bonds and Reports Branch, Livestock Marketing Division.*

[FR Doc. 79-28786 Filed 9-14-79; 8:45 am]

BILLING CODE 3410-02-M

## CIVIL AERONAUTICS BOARD

[Dockets 33361 and 32531]

### Former Large Irregular Air Service Investigation; Application of General Airways; Postponement of Hearing

On July 27, 1979, I issued a Notice of Hearing (44 FR 45231, August 1, 1979) concerning the above applicant along with five others. The General Airways part of the hearing is hereby postponed indefinitely.

Dated at Washington, D.C., September 11, 1979.

Marvin H. Morse,

*Administrative Law Judge.*

[FR Doc. 79-28747 Filed 9-14-79; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

## Industry and Trade Administration

### Department of Agriculture/Beltsville; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00233. Applicant: United States Department of Agriculture, SEA, AR, ASI, Reproduction Laboratory, Bldg. 177B, BARC-EAST, Beltsville, Maryland 20705. Article: Double Tilt Specimen Holder, Cooling Holder, Power Supply and PC Board for Direct Magnification Reading for Electron Microscope. Manufacturer: Hitachi, Perkin-Elmer, Japan. Intended use of Article: The Articles are accessories to an existing electron mricroscope which will be used to cytologically examine biological tissues from agricultural research experiments. These research problems, which pertain to food and fiber production, include cytological examinations of sperm transport and storage in farm animals, host-parasite interactions involving crop plants and parasitic nematodes, taxonomic studies gaining a cytological explanation for mastitis in cattle, etc.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being

manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

*Director, Statutory Import Programs Staff.*

[FR Doc. 79-28772 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-25-M

## Department of Agriculture/Beltsville; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00247. Applicant: VA Wadsworth Medical Center, Wilshire and Sawtelle Blvds., Los Angeles, CA 90073. Article: LKB Model 2127-001 Tachophor complete with Power Supply Unit and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological materials including proteins, peptides and metabolites from plant and animal tissues. Investigations will include studies on in vitro and/or in vivo reactions between molecules following increase, decrease, or absence of one or all of the reacting molecules. The objective pursued in the course of these investigations is to understand the interrelationship between biological molecules and to correlate these changes with chemical alterations seen in human diseases.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides the capability for counter flow isotachorphoresis. The Department of Health, Education, and Welfare advises in its memorandum dated August 9, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

*Director, Statutory Import Programs Staff.*

[FR Doc. 79-28773 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-25-M

## University of Missouri Columbia; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00248. Applicant: University of Missouri, Columbia, Missouri 65211. Article: Continuous Recording Oscilloscope Camera, Model PC-3A with Accessories. Manufacturer: Baytronix Ltd., Canada. Intended Use of Article: The article is intended to be used to record the electro-physiological responses from the auditory neurons or muscle fibers of an experimental animal.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides continuous recording while the oscilloscope is being viewed. The Department of Health, Education, and Welfare advises in its memorandum dated August 9, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

*Director, Statutory Import Programs Staff.*

[FR Doc. 79-28774 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-25-M

## University of Southern California; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 A.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket No. 79-00269. Applicant: University of Southern California, Electrical Engineering Dept., University Park, Los Angeles, CA 90007. Article: Pulsed $CO_2$ TEA Laser, Model TEA 103. Manufacturer: Lumonics Ltd., Canada. Intended use of article: The article is intended to be used to optically pump molecules in order to create population inversions between energy states of the pumped molecules. The article will be used by graduate students in order to carry out the original research required for the Ph. D. degree.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a pulse energy of 10 joules using the $CO_2$ laser. The National Bureau of Standards advises in its memorandum dated August 16, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

*Director, Statutory Import Programs Staff.*

[FR Doc. 79-28775 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-25-M

## University of Chicago, et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, by October 8, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 735 at 666-11th Street N.W. Washington, D.C.

Docket No. 79-00380. Applicant: The University of Chicago, Department of Chemistry, 5735 South Ellis Avenue, Chicago, Illinois 60637. Article: Supercon NMR System. Manufacturer: Oxford Instruments Inc., United Kindgom. Intended use of article: The article is intended to be used in research to be conducted as an integral part of the graduate educational program. The purpose of the program is to train and educate Ph.Ds in various Chemistry courses. The various research includes but is not limited to the following:

1. Investigation of reactive intermediates and reaction mechanisms by magnetic resonance chemically induced nuclear polarization,
2. Matrix isolation techniques used to study trapped reaction intermediates,
3. Magnetic resonance studies on photosynthetic pigments,
4. Flash-photolysis-NMR,
5. The study of short-chain biradicals by CIDNP at very high magnetic fields,
6. Studies in synthesis of natural and unnatural compounds, and
7. Organometallic synthesis and reaction chemistry.

Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00398. Applicant: University of Utah, Room 136 South Biology, Salt Lake City, Utah 84112. Article: $CO_2$ Infrared Gas Analyzer and Accessories. Manufacturer: Analytical Development Co., United Kingdom. Intended use of article: The article is intended to be used for photosynthetic studies of desert plants. These studies are to be conducted in the field under natural environmental conditions. Planned experiments include measurements of net photosynthesis as a function of irradiance and water stress as well as diurnal measurements of net photosynthesis. The article will also be used in the course, "Plant Adaptation," Biology #586 in which includes a laboratory where field measurements of plant physiological processes are taught. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00399. Applicant: University of Colorado, Joint Institute for Laboratory Astrophysics, B131, Boulder, Colorado 80309. Article: Lambda Physik, Model EMG 101 Excimer Laser and Accessories. Manufacturer: Lambda-Physik, West Germany. Intended use of article: The article is intended to be used to produce large quantities of free radicals by molecular dissociation for the study of the reaction chemistry, spectroscopy and energy transfer of the free radicals. Infrared emission spectroscopy is used to detect the radicals, along with double resonance probe techniques. The systems to be studied are relevant to combustion process, chain reaction chemistry, and atmospheric process. Two postdoctoral students and one graduate student will use the article for their research and will learn fundamental techniques of laser applications in chemical and physical research while using it. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00400. Applicant: Methodist Hospital of Indiana, Inc., P.O. Box 1367, 1604 North Capitol Avenue, Indianapolis, Indiana 46202. Article: Radiotherapy planning system, Model TP-11 and Accessories. Manufacturer: Atomic Energy of Canada Ltd., Canada. Intended use of article: The article is intended to be used in conjunction with a Cobalt 60 Teletherapy unit to calculate the dose distribution due to radiation in tissue. Experiments will consist of the modeling of radiation dose distributions by the computing system and comparison of the results with actual measurements. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00401. Applicant: College of Medicine and Dentistry of New Jersey—New Jersey Medical School, Department of Pathology, 100 Bergen Street, Newark, NJ 07103. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Producker AB, Sweden. Intended use of article: The article is intended to be used to section medical and biological materials for ultrastructural studies. These materials will include human and animal tissues, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, and subcellular changes in cells induced by human disease processes or by experimentally introduced noxious elements in animals. The objective of these studies is to further basic knowledge on cell and tissue ultrastructure and to reveal, at the ultrastructural level the enzyme localization and distribution in cells and tissues developing under normal and pathological conditions. The article will also be used in the graduate course, Research in Pathology to train students in the use and application of electron microscopy and to used the the electron microscope in solving individual research problems. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00402. Applicant: Robert B. Brigham Hospital, A Division of the Affiliated Hospital Center, Inc., 125 Park Hill Avenue, Boston, MA 02120. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the examination of biological materials including: human tissues and blood cells; the human parasites, *Schistosoma mansoni, ishmania donovani, malaria, Trypansoma cruzi Burghia malayii* and *Trichinella spiralis;* and a variety of rat tissues including kidneys and knee joints. The studies will include the ultrastructure of various paraistes and their interactions with human cells in immune mediated reactions, immunochemical localization of molecules in parasites and in animal tissues, monitoring of subcellular fractionation, and determination of the morphological changes occurring in arthritic rat knees. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00403. Applicant: Mount Sinai School of Medicine, Adrenal Research Laboratory, Veterans

Administration Hospital, 130 W. Kingsbridge Road, Bronx, New York 10468. Article: Mass spectrometer System, Model MM 70/70. Manufacturer: V.G. Micromass, United Kingdom. Intended use of article: The article will be used for the qualitative and quantititave analysis of hormones, especially steroids, their metabolites, biosynthetic intermediates, precursors and chemical derivatives in biomedical applications concerned with the role of these substances in normal physiology and in disease states. The mass spectrometric applications will include unimolecular gas phase reactions and gas phase ion-molecule reactions including chemical ionization mass spectrometry and ion-molecule reactions which might have utility for the analysis of this group of hormonal products. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00404. Applicant: North Shore University Hospital, 300 Community Drive, Manhasset, New York 11030. Article: Simulator, Radiation Oncology Treatment System, and Tumor Registry System. Manufacturer: Atomic Energy of Canada Ltd., Canada. Intended use of article: The article is intended to be used for the treatment of cancer patients during which it is expected that new clinical results may be yielded. It is also expected that interested physicians and health care professionals will be involved in the educational process of how this affect the patient in his entirety—socially, psychologically and physiologically. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00405. Applicant: Columbia University, Department of Anatomny, College of Physicians and Surgeons, 630 West 168th Street, New York, N.Y. 10032. Article: Electron Microscope, Model JEM-100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for the ultrastructural and cytochemical characterization of a variety of tissues including CNS, gut and endocrine gland during fetal, neonatal and adult periods. Experiments are to be carried out will involve obtaining samples of these various tissues at different periods of development from both normal and experimentally manipulated animals and correlating the cytochemical and ultrastructural appearance of the 2 sets of animals. Members of the staff will use the article for ultrastructural research and to instruct pre-doc and post-doc in the ultrastructural characterization of CNS, gut and endocrines during development. Application received by Commissioner of Customs: August 20, 1979.

Docket No. 79-00407. Applicant: The Cleveland Clinic Foundation, 9500 Euclide Avenue, Cleveland, Ohio 44106. Article: Therac 20/Saturne Linear Accelerator. Manufacturer: Atomic Energy of Canada, Canada. Intended use of article: The article intended to be used for the investigation of dynamic radiation therapy technique which involves computer control of a photon machine such that rotation, couch movement, field size adjustment, and source-skin distance all may be varied during treatment yielding a radiation dose which more uniformly conforms to the tumor volume. In addition to research in dynamic radiation therapy, research is planned in radiation physics. In particular, design of an external magnetic analysis system to shape the area irradiated by the electron beam. The article will also be used in the training of residents in standard therapy techniques and also in the more sophisticated techniques of rotational electron beam therapy and dynamic therapy. Additionally, there is a training program for radiation therapy technologists. Application received by Commissioner of Customs: August 22, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

*Director, Statutory Import Programs Staff.*

[FR Doc. 79-28776 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-25-M

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## Maritime Administration

**[Docket No. S-647]**

## Cove Ships, Inc.; Application

Notice is hereby given that Cove Ships Inc. has filed application under the Merchant Marine Act, 1936, as amended (the Act), for operating-differential subsidy to engage in bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on December 31, 1979, unless extended. Inasmuch as Cove Ships Inc., and/or related persons or firms, employ or may employ ships in the domestic intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Act will be required if the application for operating-differential subsidy is to be approved.

Cove Ships Inc. is owned by Cove Steamship Inc., whose parent company is Cove Maritime Companies Inc. Samuel Kahn, an officer and director of Cove Ships Inc., owns a pecuniary interest in Seatrain Lines, Inc. One officer and director of Cove Ships Inc. owns a pecuniary interest in Cove Tankers Associates, a related company, and two officers and directors own a pecuniary interest in Cove Communicator Associates, a related company.

Cove Ships Inc. requests written permission for its owned tanker, COVE SAILOR (formerly ERNA ELIZABETH), to be operated by Cove Shipping Inc., an affiliate, in worldwide operations (including domestic operation for service under Military Sealift Command (MSC) or private charters), as well as the right to move the vessel from one domestic trade to another, and/or from a foreign trade to a domestic trade. Permission also is requested for the COVE SPIRIT, owned by Cove Carriers Inc., a related company, and the COVE ENGINEER and COVE RANGER, owned by CTS Associates (CTS), a related company, to be operated similarly by Cove Shipping Inc. Cove Tank Ships Inc., a related company, is the managing venturer of CTS. An officer and director of Cove Tank Ships Inc. owns a pecuniary interest in Seatrain Lines, Inc.

It will be necessary to extend to Cove Ventures Inc., Cove Tankers Inc. and Cove Trading Inc., affilates of the applicant and holders of operating-differential subsidy contracts in bulk trades with the Union of Soviet Socialist Republics, the foregoing written permissions requested by Cove Ships Inc. Conversely, it will be necessary to extend to Cove Ships Inc. the section 805(a) written permission previously granted to Cove Ventures Inc., Cove Tankers, and Cove Trading Inc. These permissions are as follows:

1. For Cove Ventures Inc. to own the COVE LEADER for operation in the domestic trade;
2. For Cove Shipping Inc. to operate the COVE LEADER in the domestic trade;
3. For Cove Tankers Associates and Cove Communicator Associates, affiliates of Cove Ventures Inc., to own the COVE NAVIGATOR (formerly MOUNT NAVIGATOR) and COVE COMMUNICATOR, respectively;
4. For Seatrain Lines, Inc. to operate vessels in the domestic trade, including the Alaska/Panama trade and certain Military Sealift Command (MSC) operations, as a result of a pecuniary interest in Seatrain Lines, Inc. through a minority stock interest on the part of an officer and director of each of Cove Ventures Inc., Cove Trading Inc., and Cove Tankers Inc.;

5. For Cove Tankers Corporation's owned vessel, COVE EXPLORER (formerly MOUNT EXPLORER), and its bareboat chartered vessels. COVE NAVIGATOR and COVE COMMUNICATOR, to engage in the domestic service under MSC or private charter, and for Cove Shipping Inc. to operate these vessels in the domestic trade;

6. For Cove Trading Inc. to own the COVE TRADER for worldwide operation (including domestic operation), and Cove Shipping Inc. to operate the COVE TRADER and STUYVESANT in the carriage of Alaskan oil in the domestic trade; and

7. For the right to move the foregoing vessels from one domestic trade to another, and/or from a foreign trade to a domestic trade.

The foregoing written permission is required notwithstanding the fact that a grain voyage would not be eligible for subsidy if the vessel engages in the domestic trade on that voyage.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concering the application must, by close of busines on October 11, 1979, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

Dated: September 11, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By order of the Assistant Secretary for Maritime Affairs.

Robert J. Patton, Jr.,

*Acting Secretary.*

[FR Doc. 79-28606 Filed 9-14-79; 8:45 am]

BILLING CODE 3510-15-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### DoD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 4 October 1979, at 201 Varick Street, 9th Floor, New York, New York 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development program in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c) (1) (1976), and that accordingly, this meeting will be closed to the public.

September 12, 1979.

H. E. Lofdahl,

*Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.*

[FR Doc. 79-28764 Filed 9-14-79; 8:45 am]

BILLING CODE 3810-70-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 79-CERT-084]

### Arizona Public Service Co.; Application for Certification of Use of Natural Gas To Displace Fuel Oil

Take notice that on August 27, 1979, Arizona Public Service Company (Arizona Public), P.O. Box 21666, Phoenix, Arizona, 85036, filed an application for certification of an eligible use of natural gas to displace fuel oil at its Ocotillo Plant in Tempe, Arizona, West Phoenix Plant in Phoenix, Arizona, Saguaro Plant in Red Rock, Arizona, and Yuma Plant in Yuma, Arizona, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126-A, 2000 M Street, NW., Washington, D.C., 20461, from 8:30 a.m.—4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Arizona Public states that the volumes of natural gas for which it requests certification are 10,832,000 Mcf per year for the Ocotillo Plant, 1,671,000 Mcf per year for the West Phoenix Plant, 5,470,000 Mcf per year for the Saguaro Plant, and 2,808,000 Mcf per year for the Yuma Plant.

The eligible seller is Delhi Gas Pipeline Corporation, Fidelity Union Tower, Dallas, Texas 75201 and the gas will be transported by El Paso Natural Gas Company. This natural gas will displace the use of the following volumes of No. 6 and No. 2 fuel oil per year:

Ocotillo Plant—1,635,550 barrels of No. 6 (0.9% sulfur); 250,000 barrels of No. 2 (0.5% sulfur).

West Phoenix Plant—53,200 barrels of No. 6 (0.9% sulfur); 251,400 barrels of No. 2 (0.5% sulfur).

Saguaro Plant—715,800 barrels of No. 6 (0.9% sulfur); 243,800 barrels of No. 2 (0.5% sulfur).

Yuma Plant—346,300 barrels of No. 6 (0.9% sulfur); 147,800 barrels of No. 2 (0.5% sulfur).

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126-a, 2000 M Street, NW., Washington, D.C. 20461.

Attention: Mr. Finn K. Neilsen, on or before September 27, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is

required, further notice will be given to Arizona Public and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on September 11, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

[FR Doc. 79-28780 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-087]

## Noranda Aluminum, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on August 30, 1979, Noranda Aluminum, Inc. (Noranda), P.O. Box 70, New Madrid, Missouri, 63869, filed an application for certification of an eligible use of natural gas to displace fuel oil at its primary aluminum reduction plant at New Madrid, Missouri, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126-A, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m.-4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Noranda states that the volume of natural gas for which it requests certification is approximately 1,000 Mcf per day and the eligible seller will be either TEAMCO, P.O. Box 1050, Corpus Christi, Texas, 78403, or Energy Buyers Service Corporation, P.O. Box 19832, Houston, Texas, 77024.

This natural gas will displace the use of approximately 7,190 gallons of No. 2 fuel oil (0.5-1.5% sulfur) per day at the New Madrid plant. The gas will be transported by Tennessee Gas Transportation Company, Box 2511, Houston, Texas, 77001, Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77001, and Associated Natural Gas Company, Box 628, Blytheville, Arkansas, 72315.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126-A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, by September 27, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group of class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Noranda and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on September 11, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

[FR Doc. 79-28782 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-088]

## Terra Chemical International, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on September 4, 1979, Terra Chemical International, Inc. (Terra), P.O. Box 1828, Sioux City, Iowa, 51101, filed an application for certification of an eligible use of natural gas to displace fuel oil at its Port Neal plant in Port Neal, Iowa, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126-A, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m.-4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Terra states that the volume of natural gas for which it requests certification is approximately 4,000 Mcf per day and the eligible sellers are Centennial Gas Corporation, c/o Industrial Gas Services, Inc., 4501 Wadsworth Blvd., Wheat Ridge, Colorado, 80033, and Yates Drilling Co. and Martin Yates III, 207 South Fourth Street, Artesia, New Mexico, 88210.

This natural gas will displace the use of approximately 3,500,000 gallons of No. 2 fuel oil (0.5% sulfur) for the period between October 1, 1979, and April 1, 1980, at the Port Neal plant. The gas will be transported by Northern Natural Gas Company, Colorado Interstate Gas Company, and Iowa Public Service Company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126-A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, by September 27, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Terra and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on September 11, 1979.

Doris J. Dewton,

*Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.*

[FR Doc. 79-28781 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

## Power Management, Inc.; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Power Management, Inc., 301 W. Broadway, Ardmore, Oklahoma 73401. This Proposed Remedial Order charges PMI with pricing violations in the amount of $193,065.84, relative to PMI's sale of certain domestic crude oil at free market prices which the firm characterized as "new," "released," or "stripper well" crude oil during the period September 1, 1973 through January 31, 1976.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749-7626. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W.,

Washington, D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Dallas, Texas, on the 30th day of August, 1979.

Herbert F. Buchanan,

*Deputy District Manager, Southwest District Enforcement.*

[FR Doc. 79-28706 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket Nos. AR61-2, et al. AR69-1, et al. and AR64-2, et al.]

### Area Rate Proceedings, et al., Texas Gulf Coast Area and Southern Louisiana Area; Extension of Time

September 7, 1979.

On August 29, 1979, ARCO Oil and Gas Company, a Division of Atlantic Richfield and Company (ARCO) filed a motion with the Commission requesting an extension of time to file Revised Refund Disbursement Reports in compliance with Ordering Paragraph (C) of the Commission's Order issued November 28, 1978, in the subject proceedings. The motion states that additional time is needed to recalculate excess refund payments in light of recent Court action with respect to Refund Credits due FPC Opinion No. 749 sales. The motion further states that one of ARCO's purchasers has not yet approved a Reserve Dedication Report revision and submitted it to the Commission, thereby making refund redistribution impossible in the Southern Louisiana area.

Upon consideration, notice is hereby given that ARCO is granted an extension of time to and including October 1, 1979, for compliance with Ordering Paragraph (C) of the November 28, 1978, order.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-28751 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

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[Project Nos. 2497, 2758, 2766, 2768, 2770, 2771, 2772, and 2775]

### Brown Co. and Linweave, Inc.; Application for Transfer of Minor Licenses

September 10, 1979.

Public notice is hereby given that an application was filed on June 5, 1979, under the Federal Power Act, 16 U.S.C. §§ 791a–825r, by Brown Company (Licensee) and Linweave, Inc. (Transferee) (Correspondence to: Mr. Ira H. Belshky, Secretary and Treasurer, Linweave, Inc., 10 Linweave Drive, Holyoke, Massachusetts, 01040) for transfer of minor licenses on the following projects:

(1) Mt. Tom Mill, Project No. 2497

(2) Crocker Mill (A/B wheel) Project Nos. 2758/2766

(3) Albion Mill (A wheel) Project No. 2768

(4) Crocker Mill (C wheel) Project No. 2770

(5) Nonotuck Mill Project No. 2771

(6) Linweave Warehouse (A wheel) Project No. 2772

(7) Linweave Warehouse (D wheel) Project No. 2775

Each project is located on the Connecticut River in the City of Holyoke, Hampden County, Massachusetts.

The applicants request Commission approval of the transfer of the minor licenses presently held by Brown Company to Linweave, Inc. All project properties were conveyed from Brown Company to Linweave, Inc. by warranty deed on March 2, 1979. Licensee certifies that it has fully complied with the terms of the licenses and obligates itself to pay annual charges accrued to the date of transfer. Transferee agrees to accept all the terms and conditions of the licenses and to be bound thereby.

Transferee proposes to continue to operate Project Nos. 2497, 2758, 2766, 2768, 2770, 2771, 2772, and 2775 in the same manner and for the same purposes for which they are now operated, namely, as sources of power and energy for the textile mills adjacent to the project. The projects consist essentially of penstocks, turbines, generators, and tailraces located at eight different locations and having total installed generating capacity of 3090 kW.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before October 24, 1979.

The Commission's address is: 825 N. Capitol St., N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-28752 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

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[Docket No. ES79-62]

### Gulf States Utilities Co.; Application

September 10, 1979.

Take notice that on August 30, 1979, Gulf States Utilities Compnay (Applicant) filed a request seeking authorization pursuant to Section 204 of the Federal Power Act to issue up to 4,000,000 shares of Common Stock, with an estimated market value of $52 million, via negotiated bidding. Applicant is incorporated under the laws of Texas with its principal business office at Beaumont, Texas, and is engaged in the electric utility business in portions of Louisiana and Texas. Natural gas is purchased at wholesale and distributed at retail in the City of Baton Rouge, Louisiana and vicinity.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-28753 Filed 9-14-79; 8:45 am]

BILLING CODE 6450-01-M

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[Docket No. ER79-632]

### New England Power Co.; Filing

September 10, 1979.

The filing Company submits the following:

Take notice that New England Power Company (NEP) on August 31, 1979 tendered for filing as an initial rate schedule a Power Contract dated as of November 1, 1979 between NEP and Public Service Company of New

Hampshire (PSNH). Said Power Contract is proposed to be effective November 1, 1979 and provides for the sale by NEP and the purchase by PSNH of varying amounts of capacity and related energy during the period November 1, 1979 through October 31, 1986.

A copy of the filing was served on the Regulatory Commissions of Massachusetts, Maine and New Hampshire, as well as PSNH.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 79-28754 Filed 9-14-79; 8:45 am]
BILLING CODE 6450-01-M

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[Docket Nos. E-7777 and E-7796]

## Pacific Gas & Gas Electric Co. and Pacific Power & Light Co.; Extension of Time

September 7, 1979.

On August 29, 1979, Commission Staff Counsel filed a motion with the Commission requesting an extension of time for parties to respond to the "Motion of the Southern California Edison Company for Extraordinary Relief" filed on August 20, 1979, in the above-referenced proceeding. The motion states that additional time is needed because of Staff's involvement in other matters before the Commission. The motion further states that counsel for Edison has no objection to the request.

Upon consideration, notice is hereby given that an extension of time is granted to and including September 11, 1979, for the filing of answers in the above-referenced proceedings.

Kenneth E. Plumb,
*Secretary.*

[FR Doc. 79-28755 Filed 9-14-79; 8:45 am]
BILLING CODE 6450-01-M

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[Docket No. ER79-633]

## Sierra Pacific Power Co.; Filing

September 10, 1979.

The filing Company submits the following:

Take notice that Sierra Pacific Power Company (Sierra) on August 29, 1979 tendered for filing an agreement dated July 12, 1979 between Sierra and the United States of America, Department of Energy, Bonneville Power Administration (BPA).

The filing includes:

Exhibit A: BPA's Wholesale Nonfirm Energy Rate Schedule H-5
Exhibit B: BPA's General Rate Schedule Provisions
Exhibit C: A description of the point of delivery
Exhibit D: A description of the point of interconnection
Exhibit E: BPA's General Wheeling Provisions
Exhibit F: Service Schedule A

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the FERC, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 79-28756 Filed 9-14-79; 8:45 am]
BILLING CODE 6450-01-M

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[Docket No. ER79-634]

## Sierra Pacific Power Co.; Filing

September 10, 1979.

Take notice that Sierra Pacific Power Company (Sierra) on August 31, 1979 tendered for filing a Third Addendum to the Agreement dated February 24, 1971, between Sierra and Mount Wheeler Power, Inc. (Mount). Sierra indicates that the Addendum provides, among other things, for a different calculation and apportionment of transmission and transformation losses; modifies the requirement that all power purchased by Mount be purchased at Mount's system load factor; provides for a means to calculate payment for emergency assistance power and energy.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the FERC, 825 North Capitol Street, N.E., Washington, D.C. 20526, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 2, 1979. Protests appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 79-28757 Filed 9-14-79; 8:45 am]
BILLING CODE 6450-01-M

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## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

September 7, 1979.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Louisiana Office of Conservation

1. Control number (FERC/State)
2. API Well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block no.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-17053/79-1956
2. 17-003-20133
3. 102
4. Getty Oil Company
5. Jane P. Allen No 1
6. Lyles
7. Allen, LA
8. 350.0 million cubic feet
9. August 16, 1979
10. Tennessee Gas Pipeline Co

1. 79-17054/79-1955
2. 17-061-20151
3. 102 103
4. Jack W. Grigsby
5. J. W. Cook No. 1 (156799)
6. Ruston
7. Lincoln, LA.
8. 64.0 million cubic feet
9. August 16, 1979
10. Louisiana Gas Purchasing Corp.

1. 79-17055/79-2002
2. 17-111-00000
3. 108
4. Eason Oil Company
5. C. A. Pardue #1 (No. 81793)
6. Monroe

7. Union, LA.
8. 1.4 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp.

1. 79-17056/79-2001
2. 17-111-01197
3. 108
4. Eason Oil Company
5. Meeks-Fannie Haile 2 (No. 38256)
6. Monroe
7. Union, LA.
8. 4.9 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp.

1. 79-17057/79-2004
2. 17-111-00502
3. 108
4. Eason Oil Company
5. Thomas O. B. 1 (No. 79878)
6. Monroe
7. Union, LA.
8. 2.5 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp.

1. 79-17058/79-2003
2. 17-111-00308
3. 108
4. Eason Oil Company
5. Pardue 2 (No. 83001)
6. Monroe
7. Union, LA.
8. 3.0 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17059/79-2005
2. 17-111-00506
3. 108
4. Eason Oil Company
5. Traylor, Mrs. E. C. 1 (No. 80719)
6. Monroe
7. Union, LA.
8. 2.2 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17060/79-2006
2. 17-111-00321
3. 108
4. Eason Oil Company
5. Turner, G. L. 1 (No. 81907)
6. Monroe
7. Union, LA.
8. 3.6 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17061/79-2008
2. 17-111-00197
3. 108
4. Eason Oil Company
5. Willians, E. E. 3 (No. 98781)
6. Monroe
7. Union, LA.
8. 7.5 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17062/79-2007
2. 17-111-00135
3. 108
4. Eason Oil Company)
5. Willians, E. E. 1 (No. 35957)
6. Monroe
7. Union, LA.
8. 1.2 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17063/79-2010
2. 17-111-01170
3. 108
4. Eason Oil Company
5. Brown Estate 2 (No. 38781)
6. Monroe
7. Union, LA.
8. 10.3 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17064/79-2009
2. 17-111-01169
3. 108
4. Eason Oil Company
5. Brown Estate 1 (No. 38601)
6. Monroe
7. Union, LA.
8. 6.2 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17065/79-2012
2. 17-111-01196
3. 108
4. Eason Oil Company
5. Brown Estate 4 (No. 40067)
6. Monroe
7. Union, LA.
8. 6.4 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17066/79-2011
2. 17-111-01172
3. 108
4. Eason Oil Company
5. Brown Estate 3 (No. 38847)
6. Monroe
7. Union, LA.
8. 4.9 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17067/79-2013
2. 17-111-00323
3. 108
4. Eason Oil Company
5. Miss E. M. Chambers 1 (No. 81906)
6. Monroe
7. Union, LA.
8. 2.1 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17068/79-2014
2. 17-111-01424
3. 108
4. Eason Oil Company
5. Crow 1 (No. 36787)
6. Monroe
7. Union, LA.
8. 5.1 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17069/79-1960
2. 17-009-20216-0000-1
3. 107
4. Gulf Oil Corporation
5. Roy O. Martin, Jr. A No. 3-D
6. North Bayou Jack
7. Avoyelles, LA.
8. 20.0 million cubic feet
9. August 16, 1979
10. Louisiana Intrastate Gas Corp.

1. 79-17070/79-1959
2. 17-009-20216-0000-2
3. 107
4. Gulf Oil Corporation
5. Roy O. Martin, Jr. A No. 3
6. North Bayou Jack
7. Avoyelles, LA.
8. 300.0 million cubic feet
9. August 16, 1979
10. Louisiana Intrastate Gas Corp.

1. 79-17071/79-1958
2. 17-097-20471
3. 107
4. Gulf Oil Corporation
5. 16600 Tusc Ra Sub Turner No. 3
6. Moncrief
7. St. Landry, LA.
8. 1400.0 million cubic feet
9. August 16, 1979
10. Louisiana Intrastate Gas Corp.

1. 79-17072/79-1957
2. 17-113-20856
3. 107
4. The Stone Oil Corporation
5. Exxon Fee No. 10 (161796)
6. Lac Blanc
7. Vermilion, LA.
8. 2200.0 million cubic feet
9. August 16, 1979
10. Tennessee Gas Pipeline Company

1. 79-17073/79-1961
2. 17-109-22062
3. 103
4. Quintana Production Company
5. 11700 Rasua CL&F No. 4
6. Deer Island
7. Terrebonne, LA.
8. 1095.0 million cubic feet
9. August 16, 1979
10. United Gas Pipeline Company

1. 79-17074/79-1964
2. 17-111-00504
3. 108
4. Eason Oil Company
5. Philgreen, G. W. 1 (No. 79826)
6. Monroe
7. Union, LA.
8. 2.7 million cubic feet
9. August 16, 1979
10. Texas Gas Transmission Corp.

1. 79-17075/79-1963
2. 17-111-00511
3. 108
4. Eason Oil Company
5. Kalil, F. M. et al. (No. 81238)
6. Monroe
7. Union, LA.
8. 7.2 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17076/79-1962
2. 17-019-20827
3. 103
4. Shell Oil Company
5. F. Heyd No. 65
6. Iowa
7. Calcasieu, LA.
8. 10.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co.

1. 79-17077/79-2019
2. 17-111-20001
3. 108
4. Eason Oil Company
5. Beasley No. 2A (No. 115918)
6. Monroe
7. Union, LA.
8. 8.0 million cubic feet
9. August 16, 1979
10. Texas Gas Trans. Corp.

1. 79-17078/79-2018

2. 17-111-01210
3. 108
4. Eason Oil Company
5. Beasley 1 (#37184)
6. Monroe
7. Union, LA
8. 8.4 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp
1. 79-17079/79-2015
2. 17-111-01362
3. 108
4. Eason Oil Company
5. Barr 1 (#35698)
6. Monroe
7. Union, LA
8. 13.0 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp
1. 79-17080/79-2017
2. 17-111-01363
3. 108
4. Eason Oil Company
5. Barr 3 (#35802)
6. Monroe
7. Union, LA
8. 13.7 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp
1. 79-17081/79-2016
2. 17-111-01361
3. 108
4. Eason Oil Company
5. Barr 2 (#35764)
6. Monroe
7. Union, LA
8. 4.5 million cubic feet
9. August 16, 1979
10. Texas Gas Trans Corp
1. 79-17082/79-2086
2. 17-099-20705
3. 103
4. Amoco Production Company
5. St Martin Land Co D No 6
6. Section 28 Dome
7. St Martin, LA
8. 8.0 million cubic feet
9. August 16, 1979
10.
1. 79-17083/79-2085
2. 17-099-20689
3. 103
4. Amoco Production Company
5. St Martin Land D No 5
6. Section 28 Dome
7. St Martin, LA
8. 19.0 million cubic feet
9. August 16, 1979
10.
1. 79-17084/79-2084
2. 17-047-20536-0000-1
3. 102
4. Edwin L Cox
5. Myrasua Veselka No 2-D
6. Bayou Bouillon
7. Iberville, LA
8. 100.0 million cubic feet
9. August 16, 1979
10. Southern Natural Gas Company Cone Mills Corporation Nabisco Inc
1. 79-17085/79-2083
2. 17-047-20536-0000-2
3. 102
4. Edwin L Cox
5. Mtrbsua Veselka No 2
6. Bayou Bouillon
7. Iberville, LA
8. 200.0 million cubic feet
9. August 16, 1979
10. Southern Natural Gas Company Cone Mills Corporation Nabisco Inc
1. 79-17086/79-2082
2. 17-097-20396
3. 102
4. Shell Oil Company
5. 16600 TUSC RB SUA Turner No 1
6. Moncrief
7. St Landry, LA
8. 400.0 million cubic feet
9. August 16, 1979
10. Louisiana Intrastate Gas Corp
1. 79-17087/79-2081
2. 17-001-20769
3. 103
4. Cotton Petroleum Corporation
5. M Leger No 2
6. JRA Crowley
7. Acadia, LA
8. 400.0 million cubic feet
9. August 16, 1979
10. Tennessee Gas Pipeline Company
1. 79-17088/79-2079
2. 17-111-01464
3. 108
4. Pennzoil Producing Company
5. Downey J W No 2
6. Monroe
7. Union, LA
8. 4.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co.
1. 79-17089/79-2078
2. 17-111-01975
3. 108
4. Pennzoil Producing Company
5. Downey J W No 1
6. Monroe
7. Union, LA
8. 11.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co.
1. 79-17090/79-2077
2. 17-073-00286
3. 108
4. Pennzoil Producing Company
5. Darbonne No A-3
6. Monroe
7. Ouachita, LA
8. 6.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17091/79-2076
2. 17-073-00000
3. 108
4. Pennzoil Producing Company
5. Darbonne No A-2
6. Monroe
7. Ouachita, LA
8. 3.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17092/79-2075
2. 17-067-20209
3. 108
4. Pennzoil Producing Co
5. Crosset TBR & DEV Co No 126
6. Monroe
7. Morehouse, LA
8. 16.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17093/79-2074
2. 17-067-20208
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 125
6. Monroe
7. Morehouse, LA
8. 5.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17094/79-2073
2. 17-067-20207
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 124
6. Monroe
7. Morehouse, LA
8. 2.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17095/79-2072
2. 17-067-20206
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 123
6. Monroe
7. Morehouse, LA
8. 10.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17096/79-2069
2. 17-067-20204
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 124
6. Monroe
7. Morehouse, LA
8. 12.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17097/79-2070
2. 17-067-20205
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 121
6. Monroe
7. Morehouse, LA
8. 7.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Company
1. 79-17098/79-2071
2. 17-067-20231
3. 108
4. Pennzoil Producing Co
5. Crossett TBR & DEV Co No 122
6. Monroe
7. Morehouse, LA
8. 5.0 million cubic feet
9. August 16, 1979
10. United Gas Pipe Line Co
1. 79-17099/79-2041
2. 17-113-20745
3. 102
4. Amerada Hess Corporation
5. 14600 RA SUA Sagrera No 1
6. Esther
7. Vermilion, LA
8. 730.0 million cubic feet
9. August 16, 1979
10. Louisiana Resources Company
1. 79-17100/79-2039
2. 17-119-20195
3. 102 103

4. Sandefer & Andress Inc
5. Grayrbsub Childs No 1
6. Cotton Valley Field
7. Webster, LA
8. 350.0 million cubic feet
9. August 16, 1979
10. Arkansas Louisiana Gas Company

1. 79-17101/79-2040
2. 17-113-20713
3. 102
4. Amerada Hess Corporation
5. 13700 RA SUA C Lee No 1
6. Esther
7. Vermilion, LA
8. 50.0 million cubic feet
9. August 16, 1979
10. Louisiana Resources Company

New Mexico Department of Energy and Minerals Oil Conservation Division

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-17137
2. 30-025-25779
3. 102
4. Elk Oil Company
5. Northeast Kemnitz =3
6. Kemnitz Cisco
7. Lea, NM
8. 72.0 million cubic feet
9. August 17, 1979
10. Northern Natural Gas Company

1. 79-17228
2. 30-045-23097
3. 103
4. Amoco Production Company
5. Gardner Gas Com Well =1
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 2.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17229
2. 30-045-22978
3. 103
4. El Paso Natural Gas Company
5. Atlantic D Com =1A
6. Blanco Mesaverde
7. San Juan, NM
8. 180.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17230
2. 30-045-23366
3. 103
4. Southland Royalty Company
5. Calloway =2
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 30.0 million cubic feet
9. August 20, 1979
10. Southern Union Gathering Company

1. 79-17231
2. 30-045-23473
3. 103
4. El Paso Natural Gas Company
5. San Juan 32-9 unit =29A
6. Blanco Mesaverde
7. San Juan, NM
8. 180.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17232
2. 30-025-26279
3. 103
4. Gulf Oil Corporation
5. Arnott-Ramsay (NCT-B) well No 7
6. Langlie Mattix Queen
7. Lea, NM
8. .0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas

1. 79-17233
2. 30-005-60542
3. 103
4. Depco Inc
5. Brotar Com =1
6. Buffalo Valley
7. Chaves, NM
8. 146.0 million cubic feet
9. August 20, 1979
10.

1. 79-17234
2. 30-045-23021
3. 103
4. Southland Royalty Company
5. Grenier =23
6. Basin Dakota
7. San Juan, NM
8. 125.0 million cubic feet
9. August 20, 1979
10. Southern Union Gathering Company

1. 79-17235
2. 30-045-23333
3. 103
4. Southland Royalty Company
5. Decker =6
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 25.0 million cubic feet
9. August 20, 1979
10. Southern Union Gathering Company

1. 79-17236
2. 30-015-22404
3. 102
4. Delta Drilling Co
5. Donaldson A Comm No 1
6. Wildcat
7. Eddy County, NM
8. 1095.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17237
2. 30-015-22320
3. 102
4. Delta Drilling Company
5. South Culebra Bluff No 1
6. Wildcat
7. Eddy County, NM
8. 4694.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17238
2. 30-015-22721
3. 102
4. Delta Drilling Company
5. Carrasco Com =1
6. Wildcat
7. Eddy County, NM
8. 131.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17239
2. 30-025-26198
3. 103
4. Exxon Corporation
5. New Mexico AB State No 5
6. Langlie Mattix-Seven Rivers-Queen
7. Lea, NM
8. 250.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17240
2. 30-025-26195
3. 103
4. Exxon Corporation
5. New Mexico AB State No 4
6. Langlie Mattix Seven Rivers Queen
7. Lea, NM
8. 150.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17241
2. 30-025-26195
3. 103
4. Exxon Corporation
5. New Mexico AB State No 4
6. Fowler Upper Yeso
7. Lea, NM
8. 9.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17242
2. 30-025-11828
3. 108
4. Burleson & Huff
5. Coll A =1
6. Jalmat
7. Lea, NM
8. 1.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17243
2. 30-025-11855
3. 108
4. Burleson & Huff
5. Dyer =3
6. Jalmat
7. Lea, NM
8. 1.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17244
2. 30-025-11670
3. 108
4. Burleson & Huff
5. Leonard =1
6. Jalmat
7. Lea, NM
8. 2.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17245
2. 30-041-20182
3. 103
4. Enserch Exploration Inc
5. Lambirth No 7
6. Peterson South
7. Roosevelt, NM
8. 38.0 million cubic feet
9. August 20, 1979
10. Natural Gas Pipeline Co of America

1. 79-17246
2. 30-045-23087
3. 103
4. Hixon Development Company
5. NTB State =1

6. WAW-Fruitland-PC
7. San Juan, NM
8. 50.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17247
2. 30-015-00000
3. 102
4. Yates Petroleum Corporation
5. State CK #1
6. POW-Morrow
7. Eddy, NM
8. .0 million cubic feet
9. August 20, 1979
10.

1. 79-17248
2. 30-025-25174
3. 108
4. Burleson & Huff
5. ARCO #2-Y
6. Jalmat-Langlie-Mattix (dual)
7. Lea, NM
8. 2.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17249
2. 30-025-11687
3. 108
4. Burleson & Huff
5. Aztec #1
6. Jalmat
7. Lea, NM
8. 3.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17250
2. 30-025-11671
3. 108
4. Burleson & Huff
5. Leonard #2
6. Jalmat
7. Lea, NM
8. 1.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17251
2. 30-025-11675
3. 108
4. Burleson & Huff
5. Hadfield #2
6. Jalmat
7. Lea, NM
8. 2.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17252
2. 30-025-11676
3. 108
4. Burleson & Huff
5. Hadfield #1
6. Jalmat
7. Lea, NM
8. 5.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Co

1. 79-17253
2. 30-045-22979
3. 103
4. El Paso Natural Gas Company
5. Atlantic D Com A #2A
6. Blanco Mesaverde
7. San Juan, NM
8. 150.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17254
2. 30-045-23336
3. 103
4. Southland Royalty Company
5. Culpepper-Martin #18
6. Blanco Pictured Cliffs
7. San Juan, NM
8. 100.0 million cubic feet
9. August 20, 1979
10. Southern Union Gathering Company

1. 79-17255
2. 30-045-23332
3. 103
4. Southland Royalty Company
5. Decker #4A
6. Blanco Mesaverde
7. San Juan, NM
8. 130.0 million cubic feet
9. August 20, 1979
10. Southern Union Gathering Company

1. 79-17256
2. 30-041-00000
3. 103
4. El Ran Inc
5. Bryon #4
6. Chaveroo
7. Roosevelt, NM
8. 3.6 million cubic feet
9. August 20, 1979
10. Transwestern Pipeline Co, Cities Service Co

1. 79-17257
2. 30-041-20481
3. 103
4. Phillips Petroleum Company
5. Lambirth A No 2
6. Peterson South Fusselman
7. Roosevelt, NM
8. 250.3 million cubic feet
9. August 20, 1979
10.

1. 79-17258
2. 30-025-25742
3. 103
4. Arco Oil and Gas Company
5. Lanehart 22-#1
6. Langlie Mattix 7 Rivers Queen
7. Lea, NM
8. 49.0 million cubic feet
9. August 20, 1979
10. El Paso Natural Gas Company

1. 79-17259
2. 30-025-25752
3. 103
4. Arco Oil and Gas Company
5. State 157 B-#3
6. Jalmat Yates Seven Rivers Queen
7. Lea, NM
8. 49.0 million cubic feet
9. August 20, 1979
10. Phillips Petroleum Company

## Ohio Department of Natural Resources

### *Division of Oil and Gas*

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-17136/01712
2. 34-009-20707-0014
3. 108
4. Joseph J Mihelic
5. (Lauelle)-#3 Brawley
6.
7. Athens, OH
8. .6 million cubic feet
9. August 16, 1979
10. Columbia Gas Transmission Corp

## Texas Railroad Commission

### *Oil and Gas Division*

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-17102/03694
2. 42-435-30813
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr No 16
6. Sawyer/Canyon
7. Sutton, TX
8. 8.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Co

1. 79-17103/03693
2. 42-435-30453
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr No 3
6. Sawyer/Canyon
7. Sutton, TX
8. 13.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17104/03680
2. 42-435-31261
3. 108
4. Amoco Production Company
5. Bee County School Land No 3
6. Whitehead/Strawn
7. Sutton, TX
8. 7.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17105/03634
2. 42-435-30490
3. 108
4. Amoco Production Company
5. H F Glasscock et al B No 2
6. Sawyer/Canyon
7. Sutton, TX
8. 10.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17106/03631
2. 42-435-30917
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr D #16
6. Sawyer/Canyon
7. Sutton, TX
8. 12.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17107/03630

2. 42–435–31270
3. 108
4. Amoco Production Company
5. Jack W Brown C No 1
6. Whitehead/Strawn
7. Sutton, TX
8. 1.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17108/03629
2. 42–435–31005
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr No 16
6. Sawyer/Canyon
7. Sutton, TX
8. 9.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17109/03604
2. 42–285–31266
3. 102
4. Davis Oil Company
5. Dorothy E Stevens =1
6. North Borchers
7. Lavaca County, TX
8. 250.0 million cubic feet
9. August 17, 1979
10. Texas Eastern Transmission Corp

1. 79–17110/03625
2. 42–285–31267
3. 102
4. Davis Oil Company
5. Dorthey E Stevens =2
6. North Borchers
7. Lavaca County, TX
8. 35.0 million cubic feet
9. August 17, 1979
10. Texas Eastern Transmission Corp

1. 79–17111/03624
2. 42–285–31362
3. 102
4. Davis Oil Company
5. Dorothy E Stevens =4
6. North Borchers
7. Lavaca, TX
8. 35.0 million cubic feet
9. August 17 1979
10. Texas Eastern Transmission Corp

1. 79–17112/03601
2. 42–497–00000
3. 108
4. Gulf Oil Corporation
5. Cap Yates No 8
6. Boonsville Bend Conglomerate
7. Wise, TX
8. 5.9 million cubic feet
9. August 17, 1979
10. Natural Gas Pipeline Co of America

1. 79–17113/03588
2. 42–103–31923
3. 103
4. General American Oil Company of Tex
5. Central Dune Unit =1022
6. Dune
7. Crane, TX
8. 37.0 million cubic feet
9. August 17, 1979
10. Warren Petroleum Company Phillips Petroleum Co

1. 79–17114/03576
2. 42–105–00000
3. 108
4. Allen Compression Company
5. Mayberry No 1
6. Tippett Leonard Lower
7. Crockett, TX
8. 14.0 million cubic feet
9. August 17, 1979
10. Neleh Gas Gathering Co

1. 79–17115/03248
2. 42–087–26106
3. 108
4. El Paso Natural Gas Company
5. Henderson A =1
6. Panhandle East
7. Collingsworth, TX
8. 4.2 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79–17116/03124
2. 42–087–26152
3. 108
4. El Paso Natural Gas Company
5. Lutes 4
6. Panhandle East
7. Collingsworth, TX
8. 24.2 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79–17117/03122
2. 42–087–26019
3. 108
4. El Paso Natural Gas Company
5. Bergman =3
6. Panhandle East
7. Collingsworth, TX
8. 22.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79–17118/03126
2. 42–483–26090
3. 108
4. El Paso Natural Gas Company
5. Gooch 1
6. Panhandle East
7. Wheeler, TX
8. 16.4 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79–17119/03811
2. 42–435–31089
3. 108
4. Amoco Production Company
5. Winnie R Aldwell Trust C =5
6. Aldwell Ranch/Canyon
7. Sutton, TX
8. 15.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17120/03796
2. 42–435–31107
3. 108
4. Amoco Production Company
5. Lillian Bell Glasscock No 2
6. Sawyer/Canyon
7. Sutton, TX
8. 14.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17121/03795
2. 42–435–31245
3. 108
4. Amoco Production Company
5. Randee Fawcett Trust C No 5
6. Sawyer/Canyon
7. Sutton, TX
8. 19.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17122/03794
2. 42–435–30822
3. 108
4. Amoco Production Company
5. Randee Fawcett Trust C No 3
6. Sawyer/Canyon
7. Sutton, TX
8. 19.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17123/03793
2. 42–435–30525
3. 108
4. Amoco Production Company
5. Randee Fawcett Trust C No 1
6. Sawyer/Canyon
7. Sutton, TX
8. 8.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17124/03791
2. 42–435–30522
3. 108
4. Amoco Production Company
5. Randee Fawcett Trust No 4
6. Sawyer/Canyon
7. Sutton, TX
8. 21.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17125/03790
2. 42–435–30878
3. 108
4. Amoco Production Company
5. Bobbie H Fawcett B No 6
6. Sawyer/Canyon
7. Sutton, TX
8. 3.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17126/03781
2. 42–435–30538
3. 108
4. Amoco Production Company
5. Bobbie H Fawcett B No 2
6. Sawyer/Canyon
7. Sutton, TX
8. 19.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17127/03775
2. 42–065–00000
3. 108
4. Herrmann Partnership
5. Burnett Well ID= SW 23963
6. West Panhandle Field
7. Carson & Hutchinson TX
8. 10.5 million cubic feet
9. August 17, 1979
10. J M Huber Corporation

1. 79–17128/03741
2. 42–435–30992
3. 108
4. Amoco Production Company
5. Bobbie H Fawcett No 6
6. Sawyer/Canyon
7. Sutton, TX
8. 16.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79–17129/03740
2. 42–435–30537
3. 108
4. Amoco Production Company
5. Bobbie H Fawcett B No 1

6. Sawyer/Canyon
7 Sutton, TX
8. 6.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17130/03739
2. 42-435-31218
3. 108
4. Amoco Production Company
5. Stanley B Mayfield No 4
6. Sawyer/Ellenburger
7 Sutton, TX
8. 3.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company
1. 79-17131/03728
2. 42-435-30998
3. 108
4. Amoco Production Company
5. Bobbie H Fawcett No 7
6. Sawyer/Canyon
7 Sutton, TX
8. 16.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17132/03727
2. 42-137-30324
3. 108
4. Amoco Production Company
5. Stanley B Mayfield No 3
6. Sawyer/Canyon
7 Edwards, TX
8. 14.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17133/03710
2. 42-435-31293
3. 108
4. Amoco Production Company
5. Batts Friend B No 1
6. Whitehead/Strawn
7 Sutton, TX
8. 1.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17134/03698
2. 42-435-30824
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr No 15
6. Sawyer/Canyon
7 Sutton, TX
8. 3.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17135/03695
2. 42-435-30914
3. 108
4. Amoco Production Company
5. Edwin S Mayer Jr No 18
6. Sawyer/Canyon
7 Sutton, TX
8. 3.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17138/01214
2. 42-079-30795
3. 103
4. The Ard Drilling Company Inc
5. D S Wright H No 4
6. Levelland (San Andres),
7 Cochran, TX
8. 130.0 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company
1. 79-17139/03868
2. 42-435-30524
3. 108
4. Amoco Production Company
5. Randee Fawcett Trust No 3
6. Sawyer/Canyon
7. Sutton, TX
8. 3.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17140/03861
2. 42-179-00060
3. 108
4. Richome Oil & Gas Company
5. Morse #1 SW25894
6. East Panhandle Field
7 Gray, TX
8. 3.4 million cubic feet
9. August 17 1979
10. Coltexo Corporation (Cities Service)
1. 79-17141/03851
2. 42-435-31237
3. 108
4. Amoco Production Company
5. I R Valliant No 1
6. Sawyer/Canyon
7 Sutton, TX
8. 7.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17142/03849
2. 42-435-30592
3. 108
4. Amoco Production Company
5. John A Ward Jr A No 1
6. Sawyer/Canyon
7 Sutton, TX
8. 16.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17143/-03848
2. 42-413-30304
3. 108
4. Amoco Production Company
5. Doris Mayer Rousselot B No 1
6. Sawyer/Canyon
7 Schleicher, TX
8. 2.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17144/03835
2. 42-435-31263
3. 108
4. Amoco Production Company
5. Jack W. Brown A No 1
6. Whitehead/Strawn
7 Sutton, TX
8. 7.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17145/03834
2. 42-105-30888
3. 108
4. Amoco Production Company
5. J. F and M. E. Sudderth B No 1
6. Whitehead/Strawn
7 Crockett, TX
8. 4.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company
1. 79-17146/03833
2. 42-435-30491
3. 108
4. Amoco Production Company
5. Lillian Bell Glasscock B No 1
6. Sawyer/Canyon
7 Sutton, TX
8. 1.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17147/03831
2. 42-357-35774
3. 108
4. Energy Reserves Group, Inc.
5. Hancock A No 1
6. Farnsworth Des Moines
7 Ochiltree, TX
8. 1.0 million cubic feet
9. August 17 1979
10. Phillips Petroleum Company
1. 79-17148/03825
2. 42-435-30880
3. 108
4. Amoco Production Company
5. Willie R. Meckel No 2
6. Whitehead/Strawn
7 Sutton, TX
8. 5.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17149/03824
2. 42-435-30763
3. 108
4. Amoco Production Company
5. Winnie R. Aldwell Trust No 2
6. Shurley Ranch/Canyon
7 Sutton, TX
8. 15.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17150/03818
2. 42-435-31252
3. 108
4. Amoco Production Company
5. L. R. Valliant No 6
6. Whitehead/Strawn
7 Sutton, TX
8. 7.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company
1. 79-17151/03812
2. 42-435-31092
3. 108
4. Amoco Production Company
5. Winnie R. Aldwell Trust No 5
6. Aldwell Ranch/Canyon
7 Sutton, TX
8. 15.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company
1. 79-17152/03109
2. 42-087-26034
3. 108
4. El Paso Natural Gas Company
5. Born No 1
6. Panhandle East
7 Collingsworth, TX
8. 11.6 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17153/03108
2. 42-483-26107
3. 108
4. El Paso Natural Gas Company
5. Hill 1
6. Panhandle East
7 Wheeler, TX
8. 16.2 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17154/03107
2. 42-435-19212
3. 108
4. El Paso Natural Gas Company
5. Fields Estate 1
6. Sawyer (Canyon)
7. Sutton, TX
8. 8.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17155/03106
2. 42-087-26319
3. 108
4. El Paso Natural Gas Company
5. Wischkaemper D 1
6. Panhandle East
7. Collingsworth, TX
8. 18.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17156/03105
2. 42-087-41325
3. 108
4. El Paso Natural Gas Company
5. Bell 4 D
6. Panhandle East
7. Collingsworth, TX
8. .7 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17157/03104
2. 42-087-26080
3. 108
4. El Paso Natural Gas Company
5. Glenn 1
6. Panhandle East
7. Collingsworth, TX
8. 8.9 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17158/03103
2. 42-087-26084
3. 108
4. El Paso Natural Gas Company
5. Glen A 2
6. Panhandle East
7. Collingsworth, TX
8. 16.1 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17159/03102
2. 42-435-19214
3. 108
4. El Paso Natural Gas Company
5. Meckel 1
6. Sonora (Canyon Upper)
7. Sutton, TX
8. 5.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17160/02286
2. 42-367-31244
3. 102
4. Mitchell Energy Corporation
5. C. L. Cavness No 1 78699
6. Reno Conglomerate
7. Parker, TX
8. 187.0 million cubic feet
9. August 17, 1979
10. Natural Gas Pipeline Company of AME

1. 79-17161/02280
2. 42-215-02029
3. 108
4. American Petrofina Company of Texas
5. Graham Unit No 3
6. Mercedes Field
7. Hidalgo
8. 7.0 million cubic feet
9. August 17, 1979
10. Texas Eastern Transmission Corp.

1. 79-17162/00467
2. 42-249-30837
3. 103
4. Omega Minerals Inc.
5. West-Rider No 3 =75676
6. Sandia East (5100)
7. Jim Wells, TX
8. 59.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17163/00466
2. 42-249-30898
3. 103
4. Omega Minerals Inc.
5. Walter Blaschke "B" No. 1 =77041
6. Orange Grove (2200)
7. Jim Wells, TX
8. 86.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17164/00464
2. 42-175-31070
3. 103
4. Omega Minerals Inc.
5. Augusta Bethke No 2 =76273
6. Karen Beauchamp (2700)
7. Goliad, TX
8. 35.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17165/00463
2. 42-175-31050
3. 103
4. Omega Minerals Inc.
5. Gertrude Riggs No 3 =76256
6. Karen Beauchamp (2700)
7. Goliad, TX
8. 42.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17166/00458
2. 42-249-30838
3. 103
4. Omega Minerals Inc.
5. W. Blaschke "A" No 2-A =73893
6. Orange Grove (2200)
7. Jim Wells, TX
8. 40.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17167/00457
2. 42-249-30822
3. 103
4. Omega Minerals Inc.
5. W. Baschke "A" No 1-A =73807
6. Orange Grove (2200)
7. Jim Wells, TX
8. 69.0 million cubic feet
9. August 17, 1979
10. United Gas Pipe Line Company

1. 79-17168/00354
2. 42-483-00000
3. 103
4. Helmerich & Payne Inc.
5. Pletcher No 1
6. Wheeler Pan (Hunton)
7. Wheeler, TX
8. 1825.0 million cubic feet
9. August 17, 1979
10. Michigan Wisconsin Pipe Line Co., El Paso Natural Gas Company

1. 79-17169/00270
2. 42-211-30943
3. 103
4. McCulloch Oil Corp of Texas
5. Mathers Ranch No 26
6. Humphreys-Douglas
7. Hemphill, TX
8. 130.0 million cubic feet
9. August 17, 1979
10. Arkansas Louisiana Gas Company

1. 79-17170/00147
2. 42-483-00000
3. 107
4. Amarex Inc
5. Foster-Wheeler #1
6. Mills Ranch (Atoka)
7. Wheeler, TX
8. 360.0 million cubic feet
9. August 17, 1979
10.

1. 79-17171/00002
2. 42-365-30311
3. 103
4. Grace Petroleum Corporation
5. H. D. Browning No 1
6. Beckville West (Cotton Valley)
7. Panola, TX
8. 182.5 million cubic feet
9. August 17, 1979
10. Arkansas-Louisiana Gas Company

1. 79-17172/01207
2. 42-079-30820
3. 103
4. The Ard Drilling Company Inc
5. D. S. Wright G No 7
6. Levelland (San Andres)
7. Cochran, TX
8. 112.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17173/01206
2. 42-079-30538
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No. 6
6. Levelland (San Andres)
7. Cochran, TX
8. 1.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17174/00774
2. 42-179-00000
3. 108
4. Nevile Back
5. Back Est #2
6. East Panhandle
7. Gray, TX
8. 15.1 million cubic feet
9. August 17, 1979
10. Coltexo Corporation

1. 79-17175/03009
2. 42-295-00000
3. 103
4. Dorchester Exploration, Inc.
5. McGarrough 204 No. 1
6. Horsecreek NW (Morrow Lower)
7. Lipscomb, TX
8. 360.0 million cubic feet
9. August 17, 1979
10. Northern Natural Gas Company

1. 79-17176/03066
2. 42-261-30416

3. 102
4. Texas Oil & Gas Corp.
5. Erck Well #7 79729
6. McGill (10010)
7. Kenedy, TX
8. 1131.5 million cubic feet
9. August 17 1979
10. Florida Gas Transmission Co.

1. 79-17177/03101
2. 42-087-26133
3. 108
4. El Paso Natural Gas Company
5. Laycock A 1
6. Panhandle East
7 Collingsworth, TX
8. 1.0 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17178/03097
2. 42-435-19005
3. 108
4. El Paso Natural Gas Company
5. Mayer 1
6. Sawyer (Canyon Upper)
7 Sutton, TX
8. 6.9 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17179/03096
2. 42-087-26227
3. 108
4. El Paso Natural Gas Company
5. O'Neil A 1
6. Panhandle East
7. Collingsworth, TX
8. 5.2 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17180/03095
2. 42-087-26021
3. 108
4. El Paso Natural Gas Company
5. Betenbough 1
6. Panhandle East
7 Collingsworth, TX
8. 15.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17181/03094
2. 42-087-26243
3. 108
4. El Paso Natural Gas Company
5. Phipps 1
6. Panhandle East
7 Collingsworth, TX
8. 2.7 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17182/03093
2. 42-329-19462
3. 108
4. El Paso Natural Gas Company
5. Baxter Willis #2
6. Azalea (Strawn)
7 Midland, TX
8. 6.2 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17183/03092
2. 42-087-26212
3. 108
4. El Paso Natural Gas Company
5. Nicholson C 1
6. Panhandle East
7 Collingsworth, TX
8. 6.6 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17184/03091
2. 42-087-26265
3. 108
4. El Paso Natural Gas Company
5. Smith 2
6. Panhandle East
7. Collingsworth, TX
8. 25.3 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17185/03090
2. 42-435-30750-0026
3. 108
4. El Paso Natural Gas Company
5. Ward #6
6. Sonora (Canyon Upper)
7 Sutton, TX
8. 9.9 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17186/03089
2. 42-413-18677
3. 108
4. El Paso Natural Gas Company
5. Steen B #1
6. Fort McKavitt (Palo Pinto)
7. Schleicher, TX
8. 3.3 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17187/03088
2. 42-087-26177
3. 108
4. El Paso Natural Gas Company
5. McDowell 3
6. Panhandle East
7 Collingsworth, TX
8. 7.9 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17188/03121
2. 42-179-26030
3. 108
4. El Paso Natural Gas Company
5. Bjerg #1
6. Panhandle East
7 Gray, TX
8. 7.8 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17189/03120
2. 42-435-19233
3. 108
4. El Paso Natural Gas Company
5. Thomson F 1
6. Sonora (Canyon Upper)
7 Sutton, TX
8. 6.2 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17190/03119
2. 42-483-26092
3. 108
4. El Paso Natural Gas Company
5. Gooch 3
6. Panhandle East
7 Wheeler, TX
8. 12.9 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17191/03117
2. 42-435-19227
3. 108
4. El Paso Natural Gas Company
5. Thomson 62 1
6. Sonora (Canyon Upper)
7 Sutton, TX
8. 19.7 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17192/03116
2. 42-087-26165
3. 108
4. El Paso Natural Gas Company
5. Massey A 1
6. Panhandle East
7. Collingsworth, TX
8. .6 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17193/03115
2. 42-435-30584-0026
3. 108
4. El Paso Natural Gas Company
5. Deberry A 14
6. Sonora (Canyon Upper)
7 Sutton, TX
8. 18.3 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17194/03112
2. 42-483-36886
3. 108
4. El Paso Natural Gas Company
5. Foster Earney #1
6. Panhandle East
7 Wheeler, TX
8. 8.6 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17195/03110
2. 42-435-30862-0026
3. 108
4. El Paso Natural Gas Company
5. Meckel D 4
6. Sonora (Canyon Upper)
7 Sutton, TX
8. 15.7 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17196/00562
2. 42-203-30553
3. 102
4. Hinton Production Company
5. M N B No 2 79662
6. Waskom North (Page) Field
7 Harrison, TX
8. 220.0 million cubic feet
9. August 17, 1979
10. Mississippi River Transmission Corp

1. 79-17197/01208
2. 42-079-30838
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No 9
6. Levelland (San Andres)
7 Cochran, TX
8. 65.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17198/01205
2. 42-079-30537
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No 5
6. Levelland (San Andres)

7. Cochran, TX
8. 60.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17199/00955
2. 42-503-00000
3. 108
4. Beren Corporation
5. Jack Atwood #1
6. Henderson/Bryson
7. Young, TX
8. 12.0 million cubic feet
9. August 17, 1979
10. Southwestern Gas Pipeline
1. 79-17200/00918
2. 42-391-01108
3. 108
4. Pennzoil Producing Company
5. W J Fox No 12
6. Greta
7. Refugio, TX
8. .0 million cubic feet
9. August 17, 1979
10. United Gas Pipeline Company
1. 79-17201/00843
2. 42-297-31689
3. 102
4. R H Engelke
5. R F Fair No 1
6. Fair (6450) Field
7. Live Oak, TX
8. 127.8 million cubic feet
9. August 17, 1979
10. Tennessee Gas Pipeline
1. 79-17202/02279
2. 42-175-00000
3. 108
4. American Petrofina Company of Texas
5. S H Reed #1
6. Cabeza Creek South
7. Goliad, TX
8. 7.0 million cubic feet
9. August 17, 1979
10. United Gas Pipeline
1. 79-17203/02278
2. 42-227-31480
3. 103
4. A K Guthrie Operating Co
5. Fern Winters D #1 24761
6. Sara-Mag Canyon Reef
7. Howard, TX
8. 12.0 million cubic feet
9. August 17, 1979
10. Getty Oil Co
1. 79-17204/02136
2. 42-165-31331
3. 103
4. American Petrofina Company of Texas
5. M S Doss No 4
6. Robertson N San Andres
7. Gaines, TX
8. 26.0 million cubic feet
9. August 17, 1979
10. Phillips Petroleum Company
1. 79-17205/02074
2. 42-079-00000
3. 103
4. Monsanto Company
5. F O Mastern #54 #0369
6. Levelland
7. Cochran, TX
8. 2.4 million cubic feet
9. August 17, 1979
10. Cities Service Gas Company
1. 79-17206/02068
2. 42-079-00000
3. 103
4. Monsanto Company
5. F O Mastern #48 #0369
6. Levelland
7. Cochran, TX
8. 1.1 million cubic feet
9. August 17, 1979
10. Cities Service Gas Company
1. 79-17207/02028
2. 42-469-31322
3. 102
4. Petrotex Management Co
5. Mary C Simmons 1-A
6. Williams Frio 5700
7. Victoria, TX
8. 180.0 million cubic feet
9. August 17, 1979
10. Natural Gas Pipeline Co of America
1. 79-17208/02027
2. 42-389-31004
3. 103
4. Marathon Oil Company
5. Fidelity Trust Co Et Al Well No 5
6. Waha North Delaware Sand
7. Reeves, TX
8. 20.0 million cubic feet
9. August 17, 1979
10. Transwestern Pipeline Company
1. 79-17209/02013
2. 42-233-30623
3. 103
4. J M Huber Corporation
5. Read No 11
6. Panhandle
7. Hutchinson, TX
8. 36.0 million cubic feet
9. August 17, 1979
10. Colorado Interstate Gas Company
1. 79-17210/02012
2. 42-233-30619
3. 103
4. J M Huber Corporation
5. Magnolia Herring No 17
6. Panhandle
7. Hutchinson, TX
8. 36.0 million cubic feet
9. August 17, 1979
10. Colorado Interstate Gas Company
1. 79-17211/03087
2. 42-435-19211
3. 108
4. El Paso Natural Gas Company
5. De Berry A #9
6. Sonora Canyon Upper
7. Sutton, TX
8. 8.4 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17212/03086
2. 42-435-30861-0026
3. 108
4. El Paso Natural Gas Company
5. Meckel D 3
6. Sonora Canyon Upper
7. Sutton, TX
8. 8.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17213/03085
2. 42-087-26223
3. 108
4. El Paso Natural Gas Company
5. O Neil 1
6. Panhandle East
7. Collingsworth, TX
8. 13.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17214/03084
2. 42-435-19216
3. 108
4. El Paso Natural Gas Company
5. Meckel B 1
6. Sonora Canyon Upper
7. Sutton, TX
8. 8.4 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17215/03082
2. 42-087-26022
3. 108
4. El Paso Natural Gas Company
5. Betenbough 2
6. Panhandle East
7. Collingsworth, TX
8. 34.3 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17216/03080
2. 42-435-30864-0026
3. 108
4. El Paso Natural Gas Company
5. Meckel D 6
6. Sonora Canyon Upper
7. Sutton, TX
8. 13.9 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17217/03079
2. 42-179-26039
3. 108
4. El Paso Natural Gas Company
5. Brazos River Gas Co 1
6. Panhandle East
7. Gray, TX
8. 7.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company
1. 79-17218/00560
2. 42-469-30594
3. 102
4. R H Engelke
5. Jamie R Dean Et Al No 1
6. Telferner East (3850) (proposed)
7. Victoria, TX
8. 182.5 million cubic feet
9. August 17, 1979
10. Tennessee Gas Pipeline Co
1. 79-17219/00775
2. 42-179-00000
3. 108
4. Richard Back
5. Back Bros Fowler #1A
6. East Panhandle
7. Gray, TX
8. 9.7 million cubic feet
9. August 17, 1979
10. Coltexo Corp
1. 79-17220/00773
2. 42-179-00000
3. 108
4. Nevile Back
5. Back Bros J S Morse #1
6. East Panhandle
7. Gray, TX
8. 4.3 million cubic feet
9. August 17, 1979
10. Coltexo Corp
1. 79-17221/00772

2. 42-179-00000
3. 108
4. Nevile Back
5. Back Bros Morse B-#1
6. East Panhandle
7. Gray, TX
8. 12.0 million cubic feet
9. August 17 1979
10. Coltexo Corp

1. 79-17222/00662
2. 42-483-00000
3. 108
4. Sidwell Oil & Gas Inc
5. Ogorman B-1 33855
6. East Panhandle
7. Wheeler, TX
8. 14.3 million cubic feet
9. August 17, 1979
10. Warren Petroleum Corp

1. 79-17223/00657
2. 42-483-00000
3. 108
4. Sidwell Oil & Gas Inc.
5. Ogorman #1 33771
6. East Panhandle
7. Wheeler, TX
8. 15.2 million cubic feet
9. August 17, 1979
10. Warren Petroleum

1. 79-17224/00632
2. 42-483-30175
3. 102
4. Trigg Drilling Company Inc
5. Frye Unit 42-483-30175
6. Wildcat
7 Wheeler, TX
8. 95.0 million cubic feet
9. August 17, 1979
10. Arkansas-Louisiana Gas Company

1. 79-17225/03871
2. 42-435-30583
3. 108
4. Amoco Production Company
5. Miers 78 No 1
6. Sawyer/Canyon
7. Sutton-Edwards, TX
8. 10.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Company

1. 79-17226/03890
2. 42-357-30842
3. 103
4. Cotton Petroleum Corporation
5. Knutson No 2
6. Spoony (Lower Morrow)
7 Ochiltree, TX
8. 54.0 million cubic feet
9. August 17, 1979
10. Northern Natural Gas Company

1. 79-17227/03870
2. 42-435-31207
3. 108
4. Amoco Production Company
5. Jerry L Johnson No 2
6. Aldwell Ranch/Canyon
7. Sutton, TX
8. 8.0 million cubic feet
9. August 17 1979
10. Lone Star Gas Co

1. 79-17288/04695
2. 42-211-31033
3. 102
4. Earl T Smith & Associates Inc
5. Bowers #5-7
6. Washita Creek (Morrow Upper)
7 Hemphill, TX
8. 200.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17289/04673
2. 42-321-30782
3. 103
4. Sue-Ann Operating Company
5. Matthes No 1 75040
6. Tidehaven N (Frio Upper 6600)
7 Matagorda, TX
8. 50.0 million cubic feet
9. August 17 1979
10. Tennessee Gas Pipeline Company

1. 79-17290/04662
2. 42-297-31537
3. 102
4. Peet Oil Company
5. Goebel No 1
6. Karon West
7. Live Oak, TX
8. 255.0 million cubic feet
9. August 17 1979
10. Transcontinental Gas Pipe Line Corp

1. 79-17291/04486
2. 42-201-30602
3. 103
4. Amoco Production Company
5. Frank A Carpenter #5
6. Satsuma (7500 Yegua Moore)
7. Harris, TX
8. 105.0 million cubic feet
9. August 17 1979
10. United Texas Transmission Co

1. 79-17292/04429
2. 42-165-31407
3. 103
4. Belco Petroleum Corporation
5. Sessau 61 62077 61
6. Seminole S E (San Andres)
7 Gaines, TX
8. 11.0 million cubic feet
9. August 17, 1979
10. Phillips Petroleum Corporation

1. 79-17293/04003
2. 42-047-30331
3. 103
4. Sun Oil Company (Delaware)
5. Rupp Gas Unit No 1
6. Flowella (Vicksburg 10400)
7 Brooks, TX
8. 144.0 million cubic feet
9. August 17, 1979
10.

1. 79-17294/03966
2. 42-407-00000
3. 108
4. Reserve Oil Inc
5. Paula Feagin GU No 1 RRC No 48232
6. Cold Springs West
7 San Jacinto, TX
8. 10.8 million cubic feet
9. August 17, 1979
10. Tennessee Gas Pipeline Co

1. 79-17295/03962
2. 42-025-00000
3. 108
4. Reserve Oil Inc
5. Kubala No 2 RRC No 04840
6. Yougeen
7. Bee, TX
8. 14.8 million cubic feet
9. August 17 1979
10. United Gas Pipeline

1. 79-17296/03895
2. 42-483-30459
3. 103
4. Dyco Petroleum Corporation
5. Tipps Unit No 1
6. Buffalo Wallow (Morrow)
7 Wheeler, TX
8. 300.0 million cubic feet
9. August 17, 1979
10. Northern Natural Gas Company

1. 79-17297/01985
2. 42-606-30121
3. 102
4. McMoran Transco Exploration Co
5. State Tract 77-S Well No 1-L
6. McFaddin Beach E (8300)
7 Jefferson, TX
8. .0 million cubic feet
9. August 17 1979
10.

1. 79-17298/01377
2. 42-079-30933
3. 103
4. The Ard Drilling Company Inc
5. D S Wright H No 5
6. Levelland (San Andres)
7 Cochran, TX
8. 105.0 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17299/01212
2. 42-079-30935
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No 13
6. Levelland (San Andres)
7. Cochran, TX
8. 54.0 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17300/01211
2. 42-079-30852
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No 12
6. Levelland (San Andres)
7 Cochran, TX
8. 7.0 million cubic feet
9. August 17 1979
10. El Paso Natural Gas Company

1. 79-17301/01209
2. 42-079-30839
3. 103
4. The Ard Drilling Company Inc
5. D S Wright G No 10
6. Levelland (San Andres)
7 Cochran, TX
8. 77.0 million cubic feet
9. August 17, 1979
10. El Paso Natural Gas Company

1. 79-17302/01927
2. 42-423-30294
3. 103
4. Sun Oil Company (Delaware)
5. Shamburger Lake Ut No 602
6. Shamburger Lake (Paluxy)
7. Smith, TX
8. 51.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17303/01925
2. 42-227-31137
3. 103
4. Sun Oil Company (Delaware)
5. W R Settles Well No 16
6. Howard Glasscock

7. Howard, TX
8. 1.0 million cubic feet
9. August 17, 1979
10. Phillips Petroleum Co

1. 79-17304/01922
2. 42-469-31256
3. 102 103
4. Vanderbilt Resources Corp
5. Groll No 1
6. Weber NE (4000)
7. Victoria, TX
8. 175.0 million cubic feet
9. August 17, 1979
10. C-B Gas Gathering Co Inc

1. 79-17305/01918
2. 42-239-31283
3. 102 103
4. Vanderbilt Resources Corporation
5. Morton A No 1
6. Wayside (FRIO 3200)
7. Jackson, TX
8. 175.0 million cubic feet
9. August 17, 1979
10. Tennessee Gas Pipeline Co

1. 79-17306/01832
2. 42-335-31237
3. 103
4. Sun Oil Company (Delaware)
5. V T McCabe D No 11
6. Jameson North (Strawn)
7. Mitchell, TX
8. 29.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17307/01830
2. 42-335-31221
3. 103
4. Sun Oil Company (Delaware)
5. V T McCabe D No 8
6. Jameson North (Strawn)
7. Mitchell, TX
8. 33.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17308/01823
2. 42-335-31238
3. 103
4. Sun Oil Company (Delaware)
5. V T McCabe B No 24
6. Jameson North (Strawn)
7. Mitchell, TX
8. 53.0 million cubic feet
9. August 17, 1979
10. Lone Star Gas Company

1. 79-17309/01805
2. 42-135-32697
3. 103
4. Sun Oil Company (Delaware)
5. Foster-Johnson Unit No 1413
6. Foster
7. Ector, TX
8. 1.0 million cubic feet
9. August 17, 1979
10. Odessa Natural Corp

1. 79-17310/01956
2. 42-357-30850
3. 103
4. Natural Gas Anadarko Inc
5. Jines No 1-660
6. Ellis Ranch (Cleveland)
7. Ochiltree County, TX
8. 100.0 million cubic feet
9. August 17, 1979
10. Northern Natural Gas Company

1. 79-17311/02011
2. 42-233-30620
3. 103
4. J M Huber Corporation
5. Magnolia Herring No 16
6. Panhandle
7. Hutchinson, TX
8. 36.0 million cubic feet
9. August 17, 1979
10. Colorado Interstate Gas Company

1. 79-17312/07563
2. 42-365-30734
3. 103
4. T O & G Exploration Company
5. M E Gulley Gas Unit No 2-A
6. Betany-(Travis Peak)
7. Panola, TX
8. 108.0 million cubic feet
9. August 17, 1979
10. Arkansas Louisiana Gas Company

1. 79-17313/07332
2. 42-365-00000
3. 103
4. Getty Oil Co
5. Laura Youngblood No 1
6. Carthage (Travis Peak 6400 SW)
7. Panola, TX
8. 150.0 million cubic feet
9. August 17, 1979
10. United Gas Pipeline Co

1. 79-17314/06048
2. 42-109-31350
3. 103
4. Continental Oil Company
5. Ford Geraldine Unit No 318
6. Geraldine Ford
7. Culberson, TX
8. 7.3 million cubic feet
9. August 17, 1979
10. El Paso Natual Gas Company

1. 79-17315/06035
2. 42-135-30804
3. 103
4. Continental Oil Company
5. Arthur Brinkley A No 39
6. Flowers/Canyon Sandd
7. Stonewall, TX
8. 2.9 million cubic feet
9. August 17, 1979
10. Cities Service Co

1. 79-17316/04922
2. 42-215-00000
3. 108
4. Clark Fuel Producing Co
5. Yturria Town & Improv Co ID 39905
6. Nichols (3350)
7. Hidalgo, TX
8. 18.0 million cubic feet
9. August 17, 1979
10. Tennessee Gas Pipeline Co

1. 79-17317/04917
2. 42-215-00000
3. 108
4. Clark Fuel Producing Co
5. F B Guerra No 2-T (Id 31567)
6. Sam Fordyce (2500)
7. Hidalgo, TX
8. 11.0 million cubic feet
9. August 17, 1979
10. South Texas Natural Gas Gath Co

1. 79-17318/04813
2. 42-123-00000
3. 108
4. Lewis Oil Company
5. C G Hartman No 1 ID No 62255
6. Meyersville North (EY-Upper)
7. Dewitt, TX
8. 15.0 million cubic feet
9. August 17, 1979
10. Houston Pipe Line Company

1. 79-17319/04785
2. 42-233-00000
3. 108
4. North Star Petroleum Corporation
5. Yake A 1 RC
6. West Panhandle/Red Cave
7. Hutchinson, TX
8. 8.4 million cubic feet
9. August 17, 1979
10. Panhandle Producing Co Et Al

1. 79-17320/04783
2. 42-233-00000
3. 108
4. North Star Petroleum Corporation
5. Anderson-Prichard-Yake 1 RC (33396)
6. West Panhandle/Red Cave
7. Hutchinson, TX
8. 7.1 million cubic feet
9. August 17, 1979
10. Panhandle Producing Co Et Al

1. 79-17321/04699
2. 42-135-00000
3. 108
4. D L Bishop
5. Johnson C No 1 (19684)
6. Donnelly North (Grayburg)
7. Ector, TX
8. 17.5 million cubic feet
9. August 17, 1979
10. Phillips Petroleum Corp

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-17260
2. 47-021-02246
3. 108
4. Nashville Associates Inc
5. White Jeanine No. 2
6.
7. Gilmer, WV
8. 2.6 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission

1. 79-17261
2. 47-007-01026
3. 108
4. Nashville Associates Inc
5. Cochran Peggy No. 1
6.
7. Braxton, WV
8. 4.2 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp

1. 79-17262
2. 47-007-01033
3. 108
4. Nashville Associates Inc
5. Burke Harris No. 3
6.
7. Braxton, WV
8. 8.0 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp

1. 79-17263

2. 47-021-02248
3. 108
4. Nashville Associates Inc
5. White Harris No. 3
6.
7. Gilmer, WV
8. 2.9 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17264
2. 47-021-02259
3. 108
4. Nashville Associates Inc
5. Simmons Ogletree
6.
7. Gilmer, WV
8. 10.7 million cubic feet.
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17265
2. 47-021-02267
3. 108
4. Nashville Associates Inc
5. Dennison Richey No. 1
6.
7 Gilmer, WV
8. 4.4 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17266
2. 47-021-02260
3. 108
4. Nashville Associates Inc.
5. Simmons Walker No. A-1
6.
7. Gilmer, WV
8. 2.8 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17267
2. 47-021-02252
3. 108
4. Nashville Associates Inc
5. Black Ogletree No. 4
6.
7 Gilmer, WV
8. 1.3 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17268
2. 47-021-02251
3. 108
4. Nashville Associates Inc
5. Black Nancy No. 3
6.
7. Gilmer, WV
8. 1.7 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17269
2. 47-007-01043
3. 108
4. Nashville Associates Inc
5. C C Davis Levern No. 1
6.
7 Braxton, WV
8. 2.9 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17270
2. 47-007-01027
3. 108
4. Nashville Associates Inc
5. Cochran Ogletree No. 1
6.
7. Braxton, WV
8. 3.4 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17271
2. 47-007-01050
3. 108
4. Nashville Associates Inc
5. Kidd Charlotte Bender No. 1
6.
7. Braxton, WV
8. 3.5 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17272
2. 47-007-01047
3. 108
4. Nashville Associates Inc
5. C C Davis Max No. 3
6.
7. Braxton, WV
8. 6.0 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17273
2. 47-007-01044
3. 108
4. Nashville Associates Inc
5. C C Davis Julia No. 1-A
6.
7 Braxton, WV
8. 4.0 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17274
2. 47-007-01058
3. 108
4. Nashville Associates Inc
5. Beall Schmaker No. 4
6.
7. Braxton, WV
8. 4.0 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17275
2. 47-007-01057
3. 108
4. Nashville Associates Inc
5. Beall Danny No. 3
6.
7. Braxton, WV
8. 5.1 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17276
2. 47-007-01055
3. 108
4. Nashville Associates Inc
5. Beall Doris No. 1
6.
7 Braxton, WV
8. 3.6 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17277
2. 47-021-02250
3. 108
4. Nashville Associates Inc
5. Black Jimmez No. 2
6.
7 Gilmer, WV
8. 1.1 million cubic feet
9. August 20, 1979
10. Columbia Gas Transmission
1. 79-17278
2. 47-007-00657
3. 108
4. Nashville Associates Inc
5. Burke Harris No. 1
6.
7. Braxton, WV
8. 3.1 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17279
2. 47-007-01076
3. 108
4. Nashville Associates Inc
5. Hefner Morris No. 1
6.
7. Braxton, WV
8. 11.9 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17280
2. 47-007-01056
3. 108
4. Nashville Associates Inc
5. Beall Terry No. 2
6.
7 Braxton, WV
8. 4.8 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17281
2. 47-007-01054
3. 108
4. Nashville Associates Inc
5. Kidd Chambliss Bender No. 1-A
6.
7. Braxton, WV
8. 1.3 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17282
2. 47-007-01052
3. 108
4. Nashville Associates Inc
5. Persinger Cherokee No. 3-C
6.
7. Braxton, WV
8. 7.4 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17283
2. 47-007-01051
3. 108
4. Nashville Associates Inc
5. Persinger Amy No. 2-B
6.
7. Braxton, WV
8. 1.5 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17284
2. 47-007-01032
3. 108
4. Nashville Associates Inc
5. Burke Harris No. 2
6.
7. Braxton, WV
8. 2.5 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp
1. 79-17285
2. 47-007-01028
3. 108
4. Nashville Associates Inc
5. Knight Chris No. 1
6.

7. Braxton, WV
8. 1.3 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp

1. 79-17286
2. 47-007-01059
3. 108
4. Nashville Associates Inc
5. S L Cochran Gwyn No. 1
6.
7. Braxton, WV
8. 4.9 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp

1. 79-17287
2. 47-007-00794
3. 108
4. Nashville Associates Inc
5. Persinger Leon No. 1-A
6.
7. Braxton, WV
8. 4.7 million cubic feet
9. August 20, 1979
10. Consolidated Gas Supply Corp

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of the notice in the Federal Register.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 79-28758 Filed 9-14-79; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1319-1]

### Federal Radiation Protection Guidance for Occupational Exposures; Advance Notice of Proposed Recommendations and Future Public Hearings

The Environmental Protection Agency is reviewing existing Federal radiation protection guidance for limiting exposure of workers to ionizing radiation. Recommendations for new or revised guidance resulting from this review, when approved by the President, would supersede current guidance approved for use of Federal agencies by President Eisenhower in 1960 (25 FR 4402). This current guidance includes limits on exposure of the whole body and of certain specified individual organs or other parts of the body. In addition, general radiation protection principles requiring justification of any exposure and reduction of justified exposures to the lowest practicable levels are enunciated. For several years the Agency has been conducting a general review of the adequacy of protection afforded under these limits and principles. This review has included the following specific issues:

1. Are the doses currently received by workers and the maximum doses permitted under existing guidance adequately low? In this regard, a) how adequate is the basis used for estimating risks to health from radiation exposure, and b) what are the appropriate bases for judging maximum individual and collective radiation doses in the work force and the tradeoffs between these two indices of the health impact of occupational exposure?

2. Should the same guides apply to all categories of workers (e.g. dental workers, nuclear medicine technicians, nuclear maintenance personel, industrial radiographers)? Should specific guides be developed for pregnant women, female workers of child-bearing capacity, and/or men?

3. On what time basis should the guides be expressed? Quarterly? Annually? Should the lifetime occupational dose be limited? Should the age of the worker be a factor?

4. Should the guidance reflect or cover medical, accidental, and/or emergency exposures?

5. Is existing guidance for situations that involve exposure of less than the whole body adequate? In this respect, a) what organs and parts of the body should have designated limits, and b) what basis should be used to express guidance for exposure of more than one organ or portion of the body?

6. How should the radiation protection principles requiring (a) justification of any exposure, and (b) reduction of the dose from justified exposures to the lowest practicable or as low as is reasonably achievable level be applied to exposure of workers? Should the concept of lowest feasible level be applied to exposure of workers?

7. What, if any, relationship should be maintained between permissible levels of risk to health from radiation exposure and other regulated hazards of disease or accidents?

The Agency anticipates publishing its proposed recommendations in the Federal Register in late fall 1979, and will at that time invite public comments and announce details of public hearings to be held shortly thereafter. Because of their major responsibilities to regulate radiation exposures in public work places, the Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) will participate in sponsoring this hearing. In this way it is hoped that the issues bearing on occupational radiation protection identified above can be addresses at one time, and that later rulemaking processes by OSHA and NRC to act on this guidance can concentrate on detailed regulatory matters specific to the occupational situations over which they have authority. In addition, both EPA and NRC have been petitioned by the Natural Resources Defense Council to revise occupational standards downward. Since the issues raised are encompassed by the subject matter of this hearing, this hearing will also address those petitions.

The purpose of this advance notice is to provide potential participants with early notice of the Agency's plans and to identify specific areas of interest so that public hearings can be convened promptly after the Agency publishes its proposed recommendations. In addition to the basic issues identified above, factual information in a number of specific areas and views on the form of guidance most likely to be practical will also be of particular interest at the hearings. For example:

1. A few operations as now conducted result in exposures at or near current limits. What is the frequency and justification for these exposures, and what would be the impact of reduced exposure limits in economic costs, safety, collective dose, and/or foregone activities?

2. If several categories of permissible exposure were instituted, what exposure levels should be considered, and what radiation protection requirements would be appropriate to each? Should such a scheme of protection be adopted? What alternative schemes should be considered?

3. What mechanisms would be appropriate and practical for establishing lifetime dose records for all or some categories of workers? What are the difficulties?

Comments from interested parties are solicited on the list of issues identified above and other issues for inclusion within the scope of these public hearings. However, specific matters which bear on detailed implementation of guidance are discouraged, to the extent that they can be appropriately dealt with in subsequent rulemaking processes of implementing agencies. In addition, the Agency is considering

holding hearings in at least one location other than Washington, D.C. Comments on desirable locations for these hearings, the scope of the hearings and any other communications concerning this advance notice should be submitted to EPA by October 15, 1979, and addressed to Luis F. Garcia, Criteria and Standards Division (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone 703–557–8224.

David G. Hawkins,

*Assistant Administrator for Air, Noise, and Radiation.*

September 10, 1976.

[FR Doc. 79–28738 Filed 9–14–79; 8:45 am]

BILLING CODE 6560–01–M

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[OPP–50442; FRL 1320–6]

## Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 1021–EUP–26. McLaughlin Gormley King co., Minneapolis, MN 55427. This experimental use permit allows the use of 122 pounds of the insecticide permethrin on swamps to evaluate control of mosquitoes. A total of 12,370 acres are involved; the program is authorized only in the States of California, Florida, Maryland, Minnesota, and New Jersey. The experimental use permit is effective from August 3, 1979 to August 3, 1980. This permit is being issued with the limitation that all fish taken from the test sites be destroyed or used for research purposes only. (PM–17, Franklin Gee, Room: E–343, Telephone: 202/426–9417.)

No. 241–EUP–94. American Cyanamid Co., Princeton, NJ 08540. This experimental use permit allows the use of 375 pounds of the insecticide (±)-cyano(3-phenoxyphenyl)methyl(±)-4-difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate on cotton to evaluate control of cabbage looper, cotton bollworm, cotton leaf perforator, pink bollworm, saltmarsh caterpillar, tobacco budworm, aphids, carmine spider mite, lygus bugs, two-spotted whiteflies, and boll weevils. A total of 1,100 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from July 23, 1979 to July 23, 1980. This permit is being issued with the limitation that all treated crops are to be destroyed or used for research purposes only. (PM–17, Franklin Gee, Room: E–343, Telephone: 202/426–9417.)

No. 6704–EUP–22. U.S. Department of The Interior, Fish and Wildlife Service, Washington, D.C. 20240. This experimental use permit allows the use of 6.24 pounds of the pesticide 4-aminopyridine on sunflowers to evaluate control of grackles and red-winged, rusty, and yellow-headed blackbirds. A total of 1,600 acres is involved; the program is authorized only in the State of North Dakota. The experimental use permit is effective from August 13, 1979 to October 31, 1979. A permanent tolerance for residues of the active ingredient in or on sunflower seeds has been established (40 CFR 180.312). (PM–16, William Miller, Room: E–229, Telephone: 202/755–9315.)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)

Dated: September 7, 1979.

Herbert S. Harrison,

*Acting Director, Registration Division.*

[FR Doc. 79–28788 Filed 9–14–79; 8:45 am]

BILLING CODE 6560–01–M

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[OPP–50441; FRL 1320–7]

## Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10065–EUP–14. Fisons Corp., Bedford, MA 01730. This experimental use permit allows the use of 2,200 pounds of the pesticide bendiocarb on corn to evaluate control of corn rootworm. A total of 1,100 acres is involved; the program is authorized only in the States of Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Dakota, and Wisconsin. The experimental use permit is effective from August 2, 1979 to August 2, 1980. This permit is being issued with the limitation that all treated crops are to be destroyed or used for research purposes only. (PM–12, Frank Sanders, Room: E–229, Telephone: 202/426–9425)

No. 7946–EUP–5. J. J. Mauget Co., Inc., Burbank, CA 91504. This experimental use permit allows the use of 3.8 ounces of the fungicide (2-diethoxy)ethyl benzimidazole carbamate on American elms to evaluate control of Dutch elm disease. A total of 135 trees are involved; the program is authorized only in the States of Massachusetts and New Hampshire. The experimental use permit is effective from October 3, 1977 to October 3, 1979. (PM–21, Henry Jacoby, Room: E–305, Telephone: 202/775–2562)

No. 2139–EUP–23. Nor-Am Agricultural Products, Inc., Woodstock, IL 60098. This experimental use permit allows the use of 300 pounds of the herbicide thidiazuron on cotton to evaluate cotton defoliation. A total of 750 acres is involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, South Carolina, and Texas. The experimental use permit is effective from July 24, 1979 to July 1, 1980. Temporary tolerances for residues of the active ingredient in or on cottonseed, cottonseed hulls, milk, eggs, and the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep have been established. (PM–23, Willa Garner, Room: E–351, Telephone: 202/755–1397)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory Authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)

Dated September 7, 1979.

Herbert S. Harrison,

*Acting Director, Registration Division.*

[FR Doc. 79–28788 Filed 9–14–79; 8:45 am]

BILLING CODE 6560–01–M

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[FRL 1320–8]

## Martin Marietta Aggregates; Indianapolis, Ind.; Final Determination

In the matter of the applicability of Title I, Part C of the Clean Air Act (Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to Martin Marietta Aggregates, Indianapolis, Indiana.

On December 4, 1978, Martin Marietta Aggregates submitted an application to

the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construction a limestone quarry. The application was submitted pursuant to the regulations for PSD.

On March 19, 1979, Martin Marietta Aggregates was notified that its application was complete and preliminary approval was granted.

On March 19, 1979, U.S. EPA published notice of its decision to grant a preliminary approval to Martin Marietta Aggregates. No comments or requests for a public hearing were received.

After review and analysis of all materials submitted by Martin Marietta Aggregates, the Company was notified on May 31, 1979, that U.S. EPA had determined that the proposed new construction in Indianapolis, Indiana, would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

This approval to construct does not relieve Martin Marietta Aggregates of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

For further information contact Eric Cohen, Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353-2090.

Dated: August 14, 1979.

John McGuire,

*Regional Administrator, Region V.*

Approval to Construct EPA-5-79-A-17

In the Matter of Martin Marietta Aggregates; Indianapolis, Indiana; Proceeding pursuant to the Clean Air Act, as amended.

*Authority*

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 USC 7401 *et. seq.*, (the Act), and the Federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

*Findings*

1. Martin Marietta Aggregates is planning to construct a 600 tons per hour crushed limestone plant (Kentucky Avenue Quarry) with primary, secondary, and tertiary crushers at 2605 Kentucky Avenue, Indianapolis, Indiana.

2. Marion County is a Class II area as determined pursuant to the Act and has been designated a nonattainment area pursuant to Section 107 of the Act for total suspended particulate matter (TSP).

3. The proposed limestone quarry has an allowable emission rate of 30 tons per year. The regulations at 41 FR 55524, December 21, 1976, (the Emission Offset Policy) indicates that sources having an allowable emission rate of under 100 tons per year are not subject to the Emission Offset Policy. The proposed quarry is, therefore, subject to the requirements of 40 CFR 52.21 and the applicable sections of the Act. Consequently, a review under PSD was performed for TSP.

4. Martin Marietta submitted a PSD application to U.S. EPA on December 4, 1978. On December 6, 1978, Martin Marietta submitted more information for review and on January 25, 1979, the application was determined to be complete and preliminary approval was issued.

5. On March 19, 1979, public notice appeared in the Indianapolis News and Indianapolis Star. There were no public comments and no requests for a public hearing.

6. Both the proposed limestone quarry baghouse systems will meet an emission limit of 0.015 gr/DSCF and 0% opacity.

7. After review of all the materials submitted by Martin Marietta, U.S. EPA has determined that emissions from the operation of the limestone plant will be controlled by the application of the best available control technology.

8. The requirements of 40 CFR 52.21 for an air quality review have been met by offsetting the allowable emissions from the existing sand and gravel plant and the existing concrete batch plant.

*Conditions for Approval*

9. Design specifications for the secondary and tertiary crushing facilities shall be submitted to U.S. EPA and approved by U.S. EPA before any construction is to begin.

10. Emissions from the baghouse system shall not be in excess of 0.015 gr/DSCF.

11. The baghouse system shall not exhibit an opacity of greater than 0%.

12. No visible emissions shall be discharged from any facility, building or enclosure containing an affected facility for more than 6 minutes of any 60 minute period.

13. Emissions from storage piles will be controlled by spraying with water or a surfactant.

14. All conveyors will be hooded and have adjustable chutes.

15. Haul roads will be oiled or sprayed with water or surfactant.

16. The existing sand and gravel plant and the existing concrete batch plant, which are the source of offset emissions, will cease operations before the startup of mining operations at the Kentucky Avenue Quarry.

Conditions 9 through 16 represent the application of the best available control technology as required by Section 165 of the Act.

17. Martin Marietta must construct and operate the limestone quarry and crushing operation in accordance with the description presented in their application for approval to construct. Any change in the plan might alter U.S. EPA's conclusions and therefore, any changes must receive the prior written authorization of U.S. EPA.

*Approval*

18. Approval to construct the limestone quarry and crushers is hereby granted to Martin Marietta Aggregates subject to the conditions expressed herein and consistent with the materials and data included in the application filed by the Company. Any departure from the conditions of this approval or the terms expressed in the application, must receive the prior written authorization of U.S. EPA.

19. The United States Court of Appeals for the D.C. Circuit has issued a ruling in the case of *Alabama Power Co.* vs. *Douglas M. Costle* (78-1006 and consolidated cases) which has significant impact on the EPA prevention of significant deterioration (PSD) program and approvals issued thereunder. Although the court has stayed its decision pending resolution of petitions for reconsideration, it is possible that the final decision will require modification of the PSD regulations and could affect approvals issued under the existing program. Examples of potential impact areas include the scope of best available control technology (BACT), source applicability, the amount of increment available (baseline definition), and the extent of preconstruction monitoring that a source may be required to perform. The applicant is hereby advised that his approval may be subject to reevaluation as a result of the final court decision and its ultimate effect.

20. This approval to construct does not relieve Martin Marietta Aggregates of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

21. A copy of this approval has been forwarded to the Indianapolis/Marion County Public Library, 40 East St. Clair Street, Indianapolis, Indiana 46204 for public inspection.

Dated: July 18, 1979.

Valdus V. Adamkus,

*Acting Regional Administrator.*

[FR Doc. 79-28790 Filed 9-14-79; 8:45 am]

BILLING CODE 6560-01-M

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[FRL 1320-5]

## Water Quality Standards; Navigable Waters of the State of North Carolina

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of State Water Quality Standards Approval.

**SUMMARY:** The Environmental Protection Agency has approved certain water

quality standards revisions adopted by the State of North Carolina. These revisions become part of the State's water quality standards contained in the document, "Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina."

**FOR FURTHER INFORMATION CONTACT:** Water Division, Environmental Protection Agency, Region IV, 345 Courtland Ave., Atlanta, Georgia 30308.

**SUPPLEMENTAL INFORMATION:** On July 2, 1979 the EPA, Region IV approved the water quality standards revision 15 NCAC 2B.0214 (Nutrient Sensitive Waters) adoped by the State on May 10, 1979. This action was taken in accordance with section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)). These revisions are consistent with the Clean Water Act as interpreted in the Agency's WQS regulations at 40 CFR 35.1550.

**AVAILABILITY:** Copies of the North Carolina water quality standards may be obtained from the North Carolina Department of Natural Resources and Community Development, Division of Environmental Management, P.O. Box 27687, Raleigh, N.C. 27611.

Authority: Section 303(c) of the Clean Water Act, as amended (33 U.S.C. 1313(c)).

Thomas C. Jorling,

*Assistant Administrator.*

September 12, 1979.

[FR Doc. 79-28791 Filed 9-14-79; 8:45 am]

BILLING CODE 6460-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 79-6; FCC 79-465]**

## Electronic Computer Originated Mail (ECOM); Proceeding Terminated

**AGENCY:** Federal Communications Commission.

**ACTION:** Memorandum Opinion and Order.

**SUMMARY:** The Commission has ruled that it has end-to-end jurisdiction to regulate a form of electronic mail being proposed by the United States Postal Service. The Postal Service plans to offer Electronic Computer Originated Mail (ECOM) to high-volume users who originate messages on their own computers and transmit them to Western Union Telegraph Company. Western Union would check the messages for proper formatting and transmit them to post offices equipped with teleprinters and automatic folding machines. The Postal Service would handle physical delivery, marketing, and billing and divide the profits with Western Union. The FCC's Memorandum Opinion and Order rules that the Postal Service is proposing to establish itself as a communications common carrier and that it will thereby place itself under the regulatory jurisdiction of the FCC. Before instituting the ECOM offering, the Postal Service must file a tariff with the FCC and obtain a certificate of public convenience and necessity.

**DATES:** The proceeding has been terminated.

**ADDRESSES:** Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Oliver, Room 546, Common Carrier Bureau, (202) 632-6363.

### Memorandum Opinion and Order

Adopted: August 1, 1979.

Released: September 4, 1979.

By the Commission: Commissioner Lee Absent; Commissioner Brown concurring and issuing a statement; Commissioner Jones dissenting and issuing a statement.

In the matter of request for declaratory ruling and investigation by Graphnet Systems, Incorporated, concerning a proposed offering of Electronic Computer Originated Mail (ECOM), CC Docket No. 79-6; 44 FR 11609, March 1, 1979.

1. We have before us a Petition for Declaratory Ruling and Request for Expedited Investigation filed on November 1, 1978, by Graphnet Systems, Inc. ("Graphnet") pursuant to § 1.2 of the Commission's rules, which was opposed by Western Union Telegraph Co. (Western Union). Graphnet is seeking Commission action concerning a new service refered to as Electronic Computer Originated Mail ("ECOM"), which the United States Postal Service has proposed to begin offering to the public, using services and facilities provided by Western Union. The Postal Service filed a proposal tariff for this service with its regulatory agency, the Postal Rate Commission, on September 8, 1978, and in response that agency instituted a postal rate proceeding, Docket No. MC78-3, to consider the postal issues raised by the proposed service. On September 15, 1978, Western Union by letter advised the FCC of its intention to provide electronic communication facilities and services which will be used for ECOM and claimed that it would be doing so on a non-carrier basis unless otherwise advised.[1] On October 16, 1978, we received a letter from Western Union International, Inc., expressing concern about possible erosion of FCC jurisdiction if we were to allow Western Union to particiapte in ECOM without filing a tariff. On October 23, 1978, we received a letter from American Cable and Radio Corp. requesting us to institute an inquiry into ECOM.

2. On January 25, 1979, the Commission acted on Graphnet's Petition for Declaration Ruling and Request for Expedited Action by issuing a Notice of Inquiry (*Notice*) looking into the legal and policy implications of the issues raised by Graphnet's petition (FCC 79-43, CC Docket No. 79-6, released February 2, 1979). Comments and briefs were sought on the issues raised therein.[2]

*Description of ECOM*

3. In addressing the various issues posed, it is necessary to understand the nature of ECOM service and the functions to be performed by the Postal Service and Western Union, respectively. As stated in the Notice, Western Union has described how ECOM operates as follows:

> A user will prepare its messages in electronic form and transmit them over communications channels to Western Union's facilities, which will check for proper format and sequentially order them by postal zip code. Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destingation post offices as indicated by the zip coding. There, Western Union-provided printers will convert the messages to hard copy form for physical delivery by postal employees. In the preliminary phases, intended to last some 15 months during which the Postal Service will be evaluating public acceptance of ECOM, Western Union will use terrestrial communications channels and its Infomaster message-switching computer system to route, switch and transmit messages to the appropriate post offices. If the Postal Service's evaluation indicates public acceptance, Western Union proposes to switch to using domestic satellite facilities and "a dedicated network of intelligent, computer controlled small earth stations" both to accept users' ECOM messages in electronic form, and to distribute them to appropriate post offices.

4. ECOM is being proposed as a new sub-class of first class mail aimed at large volume users. In August 1978

[1] By letter dated November 9, 1978, the Chief, Common Carrier Bureau advised Western Union of its obligation to file a tariff. In response to the Bureau's letter (reproduced in the Appendix hereto), Western Union filed such a tariff on December 19, 1978, accompanied by a request that it be made effective on not less than one day's notice. This request was denied on December 20, 1978. The tariff was re-filed on January 8, 1979 (Transmittal No. 7467). This tariff was subsequently rejected and an application for review of this rejection is currently pending before the Commission.

[2] Comments filed in this proceeding are summarized in the Appendix.

Western Union entered into a contract with the Postal Service to provide the electronic switching and transmission facilities to be utilized in the ECOM service. Western Union states [3] that its principal functions under the contract would be to accept a message via electronic input [4] and check for proper format and inclusion of required information. Western Union would then switch and queue the input for transmission, whereupon the message would be electronically transmitted to the serving post offices (SPOs) on high-speed circuits provided by Western Union. Western Union would also provide certain equipment and incoming circuitry at the SPOs and would be responsible for the maintenance of the equipment. Payments to Western Union for the services it provides under the contract are to be based on a percentage of the fees USPS charges its customers.

5. As to the relationship between Western Union and the Postal Service, Western Union makes the point that:

> * * * C-COM is strictly a Postal Service offering. E-COM is held out to the public by the Postal Service as a new form of first class mail, and the Postal Service will determine the rates to be charged for E-COM. The Postal Service has the sole responsibility for the promotion and marketing of the service and for customer billing and collection. It owns exclusive rights to trademarks, service marks and slogans used for promotional purposes. The contract prohibits Western Union from engaging in any promotion of E-COM without advance approval of the Postal Service (in fact, Western Union does not intend to engage in any promotion). However, Western Union will provide potential E-COM users with the necessary computer programming and format information, and it will check test transmissions to determine whether the customer's programming is technically acceptable.
>
> Also, our computers will provide periodic reports of traffic volume to the Postal Service on a customer-by-customer basis.

## Comments

6. Numerous comments, oppositions and replies have been filed in response to the Notice.[5] The basic controversy centers on the nature of ECOM service, the extent of our jurisdiction to regulate ECOM, in part or in full, and whether the Postal Service's involvement in the provision of this service affects our jurisdiction.

7. Various parties have asserted that ECOM is simply an extension of USPS statutory authority to deliver the mails. Others have urged that ECOM is clearly a communications service and thus within the scope of the Communications Act. In line with these arguments, some parties conclude that either the Postal Rate Commission or this Commission has exclusive jurisdiction to oversee the ECOM offering. A crucial area of controversy here relates to whether USPS can be viewed as a "person" within the meaning of the Communications Act. Some argue that the FCC has no jurisdiction over USPS because it is a federal government entity. Others urge that our regulatory authority and its underlying objectives will be undermined if we do not assert jurisdiction.

8. Finally, it has been posited that, while we may have jurisdiction over the entire ECOM service, we should decline to exercise some or all of it in this case. Thus, some maintain that we should assert jurisdiction only over the electronic portion of ECOM, leaving the PRC to regulate physical delivery. This latter option of bifurcating regulatory authority over ECOM service is criticized in some of the comments, however. Their authors argue that bifurcation is impractical and that physical delivery is part of the ECOM offering. Propoents of this position distinguish our regulatory treatment of Mailgram service on the ground that responsibility for both the electronic transmission and physical delivery of ECOM messages will be held by one entity, rather than two as in the Mailgram approach.

9. The comments also urge various positions with respect to whether the provision of ECOM service constitutes a common carrier activity on the part of either Western Union, the Postal Service, or both. There is also debate as to whether tariffs need be filed pursuant to Section 203, who should file the tariff(s), and whether Section 214 certification is required.

## *Discussion*

10. Our essential purpose here is to provide clarification of the basic regulatory status under the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.* (1970), of the Postal Service's proposed ECOM offering. In essence, we are asked to determine: (a) Whether ECOM falls within the subject matter jurisdiction of the FCC; (b) whether the fact that the Postal Service is a governmental entity puts it beyond the jurisdiction of this Commission; and, (c) if ECOM is within the FCC's jurisdiction, what policies, rules and statutory requirements govern the offering.

11. We believe that is it particularly appropriate to take action by way of a declaratory ruling in order to remove or alleviate the uncertainty and confusion that exists in this area. We would be remiss in the discharge of our statutory responsiblities were we to remain passive in the face of the policy and regulatory uncertainties that permeate the area of the Postal Service's involvement in the electronic transmission of information. As an administrative agency, we are vested by statute with broad discretionary powers to devise and use procedures, such as the issuance of declaratory judgments, that are necessary to discharge our statutory responsibilities to regulate interstate and foreign communications. Unlike federal courts, we are not restricted to adjudications of matters that are "cases or controversies" within the meaning of Article III of the Constitution. Rather, Section 5(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), states:

> The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

This Section thus authorizes agencies to issue declaratory orders with the sole objective of removing uncertainty. Moreover, Sections 4 (i) and (j) and 403 of the Act give us broad general power to issue orders which are appropriate to the performance of our functions. For those reasons we believe that this is an appropriate context for the issuance of a Declaratory Order designed to establish the basic jurisdictional aspects of the proposed ECOM service offering by Western Union and the Postal Service.

12. In the comments presently before us, it is clear that sharply differing views exist as to whether the Postal Service will be subject to the jurisdiction of this Commission if it should seek to offer ECOM. The purpose of this declaratory ruling is to remove that uncertainty and provide guidance for Western Union and the Postal Service should they eventually offer ECOM or essentially like services.

13. In determining whether ECOM service would fall within our jurisdiction, it is necessary first of all to set forth the scope of the mandate Congress entrusted to us. Congressional purposes are clearly stated in the first paragraph of the Communications Act of 1934, which declares that the Commission was created for "the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient,

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[3] Western Union Comments, pp. 3-5.

[4] Access can be had to Western Union's Infomaster computer through the use of regular MTS or WATS service at the customer's expense. Alternatively, magnetic tapes can be delivered directly to the Infomaster center.

[5] As indicated above, a summary of the comments filed in this proceeding is included in the Appendix.

Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *." 47 U.S.C. 151. The scope of FCC jurisdiction is stated in the next section, which provides that the Communications Act shall "apply to all interstate and foreign communication by wire or radio * * * and to all persons engaged within the United States in such communications * * *" 47 U.S.C. 152(a). In the third section of the Act Congress made clear that the Commission's authority over interstate communication by wire or radio covers not only the "transmission" of messages but also "all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmissions." 47 U.S.C. 153 (a) and (b). Sections 201 and 202 specifically outlaw unjust, unreasonable and discriminatory practices by any common carrier in connection with its furnishing of interstate and foreign communication. 47 U.S.C. 201 and 202. The Act also requires each common carrier to file with this Commission "schedules showing all charges for itself and its connecting carriers for interstate or foreign wire or radio communication * * * and showing the classifications, practices and regulations affecting such charges." 47 U.S.C. 203(a). Furthermore, the Act provides that no carrier "shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act * * * and no carrier shall * * * extend to any person any privilege or facilities, in such communication, * * * except as specified in such schedule." 47 U.S.C. 203(c). The Commission is also empowered to conduct hearings concerning the lawfulness of any new or existing charge, classification, regulation or practice of a common carrier and to prescribe just and reasonable ones. See 47 U.S.C. 204 and 205.

14. Thus, in the Communications Act of 1934, as amended, Congress has established a scheme of regulation designed to assure the delivery of communication services to the people of the United States under terms and conditions which would allow the people to take full advantage of the existence of those services. In order to assure the reasonableness of those terms and conditions, Congress in Title II of the Act vested in this Commission jurisdiction over common carriers engaged in interstate and foreign communications. It is evident, moreover, that this Commission has broad and flexible regulatory powers regarding interstate and foreign communications services and facilities and the terms and conditions under which such services and facilities are offered to the public. *Philadelphia Television Broadcasting Co.* v. *FCC*, 395 F.2d 282 (D.C. Cir. 1966).

15. In ascertaining whether ECOM constitutes an interstate communications service under the Communications Act, it is appropriate to begin with the Act's definition of "communications," which is the

> * * * transmission (by wire or radio) of writing, signs, signals, pictures, and sounds of all kinds * * * including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding and delivery of communications) incidental to such transmission.[6]

Moreover, interstate and foreign communications is defined as communications between states, and between states and a foreign point.[7] Based on the legislative history of the Act, the Supreme Court has determined that our jurisdiction over communications services has been broadly defined by the "very general terms" used in the Act, *U.S.* v. *Southwestern Cable Co.*, 392 U.S. 157, 168 (1968). See also *California Water and Telephone Co.*, 64 FCC 2d 753 (1977).

16. It is undisputed that ECOM is designed to offer consumers a service whereby information can be transmitted from a point of origination to one or more points of termination by means of electronic communications facilities. We therefore conclude that ECOM will be a communications service, pursuant to the statutory definition in Sections 3(a) and 3(b) of the Act. We also believe that the "including all instrumentalities" aspect of the statutory definitions ensures that, once an entity is regulated because it is engaged in transmission, its activities incidental to that transmission will also be subject to our regulatory authority.[8] Thus, we find that both the electronic transmission and physical delivery portions of ECOM incidental thereto constitute a communications service within the terms of Sections 3(a) and 3(b) of the Act.

17. Not only is the proposed service "communications by wire or radio;" it is also a common carrier activity. As has often been noted, the statutory definition of common carrier is not helpful: " 'common carrier' or 'carrier' means any person engaged as a common carrier for hire * * * " 47 U.S.C. 153(h). Our Rules shed little additional light on the issue: " * * * any person engaged in rendering communication service for hire to the public." 47 CFR 21.1 Like our Rules and the language of the Act, Legislative history is also less than illuminating: the term was not intended to include " * * * any person not a common carrier in the ordinary sense of the term." Thus, whatever guidance we are to receive on the meaning of communications common carriage must come from judicial interpretations and comparisons of ECOM with existing communications common carrier services already regulated under the Act.

18. With respect to the relevant judicial decisions defining the nature of common carriage,[9] we note that none of the parties to this proceeding appears to dispute that ECOM service would constitute a common carrier offering if it were to be provided by an entity other than the Postal Service. We also conclude independently that ECOM is a quasi-public offering of a for-profit service which affords the public an opportunity to transmit messages of its own design and choosing. Based on those judicially defined criteria, we find that, in offering ECOM, the Postal Service is engaging in a common carrier activity.[10]

19. Uncontroverted evidence that ECOM service would be virtually identical to Western Union's tariffed Mailgram offering in scope, service, operation, and facilities,[11] also leads us to conclude that ECOM is a common carrier communications service subject to our jurisdiction. Western Union has tariffed the electronic communications

[6] 47 U.S.C. 153(a) and (b) (1970).

[7] 47 U.S.C. 153(e), 153(f) (1970).

[8] The origin of the "all instrumentalities * * * including delivery" language contained in Sections 3(a) and 3(b) of the Act lies in the Hepburn Amendments to the Interstate Commerce Act of 1887. (Hepburn Act of 1906, 34 Stat. 584). In order to put a halt to certain discriminatory practices by various railroads, Congress adopted in the "Hepburn Amendments" the "all instrumentalities" language which had the effect of expanding regulatory jurisdiction. The underlying rationale for expanding jurisdiction was to get at discriminatory practices in activities not previously covered by tariffs. *See*, House Committee on Interstate and Foreign Commerce. Powers of the Interstate Commerce Commission, H.R. Rep. No. 591, 59th Cong., 1st Sess. (1906) (hereinafter cited as "Hepburn Hearings"). This language was carried over to the Communications Act with the same intent in mind. *See* S. Rep. No. 781, 73rd Cong., 2d Sess. 2 (1934).

[9] *See, e.g., FCC* v. *Midwest Video Corp.*, —— U.S. —— (1979), 99 S.Ct. 1435 (1979); *NARUC* v. *FCC*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 922 (1976); *NARUC* v. *FCC*, 533 F.2d 601 (D.C. Cir. 1976); *AT&T* v. *FCC*, *572 F.2d 1976 (2d Cir. 1978)*.

[10] *See generally* cases cited in note 9 *supra*.

[11] Mailgram includes, among other services, an end-to-end communications offering in which messages are accepted in electronic form at Western Union's facilities, are transmitted electronically by Western Union to appropriate SPOs, are printed out in hard copy form on Western Union provided apparatus, and are delivered by Postal employees.

segment of Mailgram with this Commission in clear recognition that it is the type of interstate communications common carrier service subject to the Communications Act of 1934.

20. When we authorized Western Union's Mailgram offering, a question was raised whether the physical delivery of Mailgram messages by the Postal Service was "incidental" to the electronic carriage of the messages and, therefore, subject to our jurisdiction. Because of the limited role played by the Postal Service in Mailgram and the experimental nature of the service, the Commission chose not to regulate directly the rates and terms of service for physical delivery of Mailgram messages. It must be kept in mind, however, that the Postal Service's role in providing Mailgram was limited to providing physical delivery services. Thus, in *United Telegraph Workers* v. *FCC*, 436 F.2d 920 (D.C. Cir. 1970), the court specifically noted that "[t]he Postal Service's sole involvement will be in preparing Mailgrams for mailing, after receipt over the telegraph wires, and in delivering them as first class mail." *Id.* at 922–23. The court also expressly distinguished the fact that the Postal Service would not be acquiring or leasing telegraph wires and facilities for public use. Yet, even there, the court also held open the possibility that, if necessary, the FCC could control "the end portion of the service;" *i.e.*, delivery by the Postal Service.

21. It is obvious, therefore, that in some respects the factual situation before us in ECOM is different from Mailgram. In Mailgram the Postal Service was to have no involvement in the electronic transmission component of the service, and the service was to be offered and marketed solely by Western Union over its own or leased facilities, with the Postal Service as its delivery agent. By contrast, ECOM would constitute an integrated service which is offered and marketed solely by the Postal Service over transmission facilities acquired from Western Union. In offering ECOM, the Postal Service would thus be holding out to the public a single, integrated communications service, consisting of both transmission and delivery. Consequently, we believe that the nature of the proposed offering would bring both its transmission and delivery components squarely within the subject matter jurisdiction of the FCC as a common carrier activity.

22. Having determined that ECOM, as an end-to-end service, is a communications common carrier service within our jurisdiction, we must next consider whether the Postal Service's status as a governmental entity puts it beyond the jurisdiction of this Commission. In that regard, the Postal Service claims that it is not a "person" within the meaning of the Act and therefore is not subject to our jurisdiction.[12]

23. In considering this argument, we start with Section 2(a) of the Act, which provides that 47 U.S.C. 152(a). Section 3(i) of the Act provides the definition of "person":

> [t]he provisions of this Act shall apply to all interstate and foreign communication by wire or radio * * *, and to all persons engaged in such communication * * *
> "Person" includes an individual, partnership, association, joint-stock company, trust or corporation.

47 U.S.C. 153(i). Although the term "person" is broadly defined by the descriptive list of entities in Section 3(i) of the Communications Act, the statute does not expressly include governmental bodies. Where, as here, the statutory definition of "person" does not explicitly list governmental bodies, general rules of statutory construction must be applied. In such cases

> [t]he purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by use of the term, to bring state or nation within the scope of the law.

*United States* v. *Cooper Corp.*, 312 U.S. 600, 605 (1941).

24. Application of this general principle requires that we examine the overall statutory framework of the Communications Act to determine whether it evidences a congressional intent to include governmental agencies within the term "person." In this regard, we first of all note that the Act confers upon the FCC broad and expansive regulatory authority over interstate communications by wire and radio. See *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968). The Act also broadly defines the wire and radio communications subject to our jurisdiction to include the transmission of "writing, signs, signals, pictures and sounds of all kinds," as well as "all instrumentalities, facilities, apparatus, and services," incidental to these transmissions. 47 U.S.C. 153(a) and 153(b). In addition, one of the primary purposes of the Act was to invest in one governmental agency, the FCC, central responsibility for regulation of all interstate wire and radio communications. 47 U.S.C. 151; see *Southwestern Cable, supra.*[13] Secondly, we note that the term "person" in the Act is defined inclusively; there is no indication that the enumerated list is designed to exclude other entities not specifically mentioned. Finally, we observe that, where Congress desired to exempt government from specific provisions of the Act, it has done so explicitly. Thus, under Title III of the Act radio stations operated by the United States are not subject to the licensing provisions of Section 301 or the broadcasting regulatory authority of Section 303. See Section 305, 47 U.S.C. 305.

25. Based on the above analysis, we believe that the statutory design of the Communications Act is clear: the term "person" was to be broadly construed to include all save those specifically excluded elsewhere in the Act.[14] Indeed, the Postal Service's tendered interpretation of "person" would render Section 305 of the Act wholly superfluous. Further, Section 305 amply demonstrates that Congress knew how to forbid us from regulating governmental entities when it intended to do so.

26. Although we feel that a fair reading of the Act itself renders the term "person" unambiguous, we proceed to examine general axioms of statutory construction to eliminate any remaining doubt. Governmental authorities are found subject to regulation "where the inclusion of a particular activity within the meaning of the statute would not interfere with the processes of government." 3 Sutherland, *Statutory Construction*, § 62.02, p. 72 (4th Ed. 1974). Thus, we are to examine whether FCC regulation would impede or interfere with the government acting in its "sovereign capacity," on the one hand, or whether our regulation would oversee the Postal Service in a "commercial and business," *i.e.*, proprietary function. *Id.*

27. We have the benefit of numerous court decisions on this issue, holding, albeit in somewhat different contexts, that the United States Postal Service has been "launched * * * into the commercial world." *Standard Oil Division, American Oil Co.* v. *Starks*, 528 F.2d 201, 202 (7th Cir. 1975). The non-governmental nature of the Postal

[12] The issue of our jurisdiction over the Postal Service was raised but not decided in *United Telegram Workers* v. *FCC*, 436 F.2d 920 (D.C. Cir. 1970).

[13] Regulatory powers over electronic communications that previously had been vested in other federal government entities, including the Interstate Commerce Commission and the Postmaster General, were expressly consigned to the FCC in the Communications Act of 1934. 47 U.S.C. 151, 601(b), and 602(b).

[14] Consistent with this schema, Section 306 partially exempts persons sending communications on a foreign ship although within the jurisdiction of the United States.

Service's activities is especially apparent when it engages in competition with private enterprise. *Id.* at 204 (emphasis added).

Factually USPS operations cannot be described as exclusively governmental. Indeed, most of its work is not governmental in nature. The powers that are set out in § 401 and outlined above in Part II of this opinion are *powers that are common to any business organization.* The delivery of mail itself is not inherently an operation that must be government-operated and in fact is not exclusively so operated today. The United States Parcel Service is but one example of a private mail delivery system; in addition Consumer Services Corporation in Ohio, Private Postal System of America in Florida, and American Postal Corporation on the West Coast all are presently delivering third and fourth class mail. The Western Union has its mailograms [sic], and there are hundreds of sub-contractors working for the USPS itself.

28. Using the "proprietary functions" rationale, five circuit courts have found that, subsequent to its reorganization into the form of a USPS in 1970, the postal agency can no longer claim the sovereign's immunity to suit. *Standard Oil Division, supra; Beneficial Finance Co. of New York* v. *Dallas,* 571 F.2d 125 (2d Cir. 1978); *General Electric Credit Corp.* v. *Smith,* 565 F.2d 291 (4th Cir. 1977); *Goodman's Furniture Co.* v. *United States Postal Service,* 561 F.2d 462 (3rd Cir. 1977); *May Department Stores Co.* v. *Williamson,* 549 F.2d 1147 (8th Cir. 1977). A review of those cases clearly demonstrates a unanimous consensus among the courts that USPS has been organized along the lines of an ordinary business operation, with instructions from Congress to go forth and make its way in the commercial world. They have concluded that the Postal Service's proprietary role renders it an appropriate object of suits. Consequently, we believe it is also reasonable to conclude that the Postal Service is an appropriate object of regulation by a federal agency when it enters a domain that has been traditional preserve of private enterprise.[15]

29. A second maxim of statutory construction raises the question of whether "the purpose which Congress sought to achieve in that statute [can] be accomplished if the agency in question is exempted." Sutherland, *supra,* § 62.02, p. 72. This principle was applied by the United States District Court of the District of Columbia to find the Postal Service subject to regulation by the Cost of Living Council under the Economic Stabilization Act of 1970. *National Association of Letter Carriers* v. *United States Postal Service,* 333 F. Supp. 566 (D.C. 1971). In that case it was argued that a general jurisdictional grant over "persons" should not include governmental agencies such as the Postal Service. The court disagreed and summarized the applicable rule of statutory construction:

The plaintiffs point out that the Act does not expressly state that it applies to the government and contend that the rule of construction in *United States* v. *United Mine Workers* * * * requires the Court to construe the statute as not applicable to the government. That rule states that "statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." (Citation omitted.) However, this general rule is of limited applicability. *Where the accomplishment of the clearly manifested legislative purpose of the statute would be frustrated unless the statute was applied to the government, the courts will not resort to a rule whose purpose is but to resolve doubts where the statute's aims are unclear.* (Citations omitted.) It appears that this exception to the general rule would apply in the instant case. (Emphasis added.)[16]

30. The *Letter Carriers* decision above follows a series of Supreme Court decisions that have used similar reasoning to impose regulation upon other government agencies, either directly or through laws affecting their officers. In *Nardone* v. *United States,* 302 U.S. 379 (1937), the anti-wiretapping provision of the Communications Act was applied to federal agents. In *United States* v. *Arizona,* 295 U.S. 174 (1935), the Secretary of the Interior was forbidden to construct a dam without receiving prior permission from the Secretary of War and the Chief Engineers. In *U.S.* v. *California,* 297 U.S. 175 (1936), a state-owned railroad was subjected to regulation under the Safety Appliance Act.[17]

31. The pattern of reasoning in *U.S.* v. *California, supra,* is typical of all three Supreme Court cases. First, the Court determined that purpose of the statutory provisions in question. Then it inquired if that purpose could logically be accomplished without bringing governmental agencies within the coverage of the statute. Concluding that it could not, the Court deduced that Congress intended a governmental entity to be regulated.[18] A presumption against application of a statute to the sovereign, it said "is an aid to consistent construction of statutes * * * when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." *Id.* at 186.

32. Applying the reasoning of those cases to the jurisdictional question here, we observe initially that both the express language and the legislative history of the Communications Act amply demonstrate Congress's intent to centralize federal regulatory authority over all wire and radio communications services in one agency, thereby ending a division of authority among several federal agencies. A reasonable inference is that Congress believed the regulation of wire and radio communications would be best accomplished by one agency with comprehensive powers and consistent regulatory policies, rather than by several agencies with fragmented authority and possible inconsistent goals and policies. The wisdom and necessity of centralizing regulatory authority over these forms of comunications services in one agency is clearly demonstrated by the situation confronting use here. In recent years, this agency has embarked upon a series of policy initiatives designed to encourage competition in the electronic communications field. In doing so, our objective has been to further the basic aim of the Communications Act, that is, to make wire and radio communications available to all the people of the United States on a rapid and efficient basis at reasonable charges. 47 U.S.C. 151.

33. In our recent decisions in CC Docket No. 78-96, for example, we have declared a policy of open entry for applicants seeking to provide public message services, including facsimile, teletyped and computer-printed messages originating at offices which will be available to the general public on a walk-in or phone-in basis.[19] Prior to

[15] Such reasoning is consistent with previous decisions interpreting the extent of our jurisdiction over government entities. A state-owned telephone company operated in a manner similar to privately owned enterprises was declared subject to regulation by this Commission in *Puerto Rico Telephone Co.* v. *FCC,* 553 F.2d 594 (1st Cir. 1977).

[16] *Id.* at 570.

[17] The Supreme Court has also held that certain government-owned enterprises are subject to suit under the antitrust laws. *City of Lafayette* v. *Louisiana Power & Light Co.,* 435 U.S. 389 (1978).

[18] The *California* opinion included a discussion of the Safety Appliance Act and the Court's conclusion that "[t]he danger to be apprehended is as great and commerce may be equally impeded whether the defective appliance is used on a railroad which is state-owned or privately-owned. *Id.* at 185. Similarly, in *Nardone* the Court concluded that an anti-wiretapping provision would be meaningless if not applied to federal agents, and in *Arizona* it determined that regulation of dam-building would be ineffectual if not applied to an agency which was heavily involved in the building of dams, the Department of the Interior.

[19] *Domestic Public Message Services,* 71 FCC 2d 471 (1979). *See also Specialized Common Carriers,* 29 FCC 2d 870 (1971), *aff'd, Washington Utilities and Transportation Commission* v. *FCC,* 513 F.2d1142 (9th Cir. 1975), *cert. denied* 423 U.S. 836 (1975); *Resale and Shared Use,* 60 FCC 2d 261, *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T* v.

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those decisions, the entire field was preempted by Western Union, but we expect that our public message ruling and other decisions to permit open entry will stimulate carriers to provide electronic message services at low cost and in a variety of innovative formats. The question we face now is whether such growth can occur in the face of entry by the Postal Service into that emerging communications market, absent regulatory scrutiny by this Commission.

34. The comments submitted in this proceeding reflect intense concern among private carriers over the possibility of competition from a government agency.[20] The carriers express a fear that such an agency, operating on a tax-exempt basis with the benefit of public subsidies, would price its services below cost for an initial period of sufficient duration to drive private competitors out of the business or preclude their entry. Their concern is heightened substantially by the knowledge that, as a practical matter, private carriers will be largely dependent on the Postal Service for local delivery of hard-copy messages after they have been transmitted to printers in receiving cities.[21]

35. The carriers also assert that USPS would face strong incentives to discriminate in favor of its own transmission service, to the detriment of private carriers. Several parties, for example, compare the local distribution facilities of USPS to the local telephone exchanges controlled by AT&T.[22] Like telephone local loops, they argue, the physical delivery service provided by USPS should be made available on an equal and non-discriminatory basis to inter-city communications common carriers. *Id.* The carriers note that this Commission has found it necessary to assert jurisdiction over AT&T's control of access to local facilities in order to prevent it from discriminating in favor of its own inter-city subsidiary, and they contend that the same kind of safeguards will be necessary in the case of USPS.

36. In considering those arguments, this Commission does not assume that the Postal Service plans to engage in predatory or anti-competitive practices. At the same time, they lead us to believe that Postal Service entry into the communications field, if governed only by statutes and policies designed for its mail delivery functions, would be inconsistent with the intent of Congress when it enacted the Communications Act and with the performance of our statutory duty to regulate all interstate wire and radio communications. In particular, because of the Postal Service's size, unique financial resources, and critical "bottleneck" control over physical delivery services, we believe it is reasonable to assume that private investment in the emerging, rapidly developing record communications field may be severely discouraged by the possibility of unregulated competition from the Postal Service. Absent substantial investment by the private sector in communications services, there is a real possibility that electronic transmission services could evolve into a non-competitive market, perhaps exhibiting far less innovation, imagination, and efficiency than services provided by competitive entities.

37. All of these considerations lead us to the conclusion that this Commission cannot fulfill its statutory responsibilities without asserting jurisdiction over the Postal Service. By doing so we may enforce the common carrier regulatory provisions contained in Title II of the Communications Act and thereby ensure that the future course of electronic communication services will be directed in a manner that will best support the goals set forth in Section 1 of the Act. The exercise of our statutorily grounded responsibilities need not and does not reflect any adverse judgment with respect to the motives or intentions of the Postal Service. Those responsibilities cannot be avoided, however, if we hope to fulfill the purposes which Congress sought to achieve when it enacted the Communications Act of 1934.

38. To summarize, it is our view that, by listing specific exceptions to FCC jurisdiction over governmental entities, the Communications Act clearly implies an intent to include such agencies within the sweep of other provisions not containing exemptions. General principles of statutory construction also support the proposition that USPS is a "person" within the meaning of the statute: It is a proprietary enterprise which, like other government-owned entities that have been found subject to regulation, has been organized in a form similar to commercial ventures, and its unregulated entry into a competitive marketplace could seriously jeopardize achievement of the goals embodied in the Communications Act. On those grounds we must conclude that the Postal Service, in its ECOM offering, is subject to the jurisdiction of this Commission.[23]

39. Specifically, we conclude that, if the Postal Service offers ECOM, it will be required to file an application for a certificate of public convenience and necessity pursuant to Section 214 of the Communications Act and that it must obtain such authorization before implementing the proposed service. It is likewise subject to the tariffing requirements contained in Title II of the Communications Act. Applicable standards regarding tariffs and certificates of entry will be determined in the context of those future proceedings, should the Postal Service file such an application and tariff.

40. In making these determinations we are fully cognizant of the argument, raised by some of the parties, that subjecting the Postal Service to the requirements of the Communications Act may create a conflict between the duties of this Commission and the authority of the Postal Rate Commission. Such contentions appear to be premised on an assumption that ECOM is a "postal" service which is therefore within the regulatory jurisdiction of the PRC.[24] We note in this regard that the PRC has determined that Postal Service participations in Mailgram delivery is a "non-postal" function which is not subject to regulation under Section 3622 of the Postal Reorganization Act. See *Opinion and Recommended Decision Concerning Stipulated Proposal for*

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*FCC*, F.2d 17 (2d Cir. 1978), *cert. denied* 99 S.Ct. 213 (1978); *Domestic Satellite Facilities*, 35 FCC 2d 844, *aff'd sub nom. Network Project* v. *FCC* 167 U.S. App. D.C. 220 (1975).

[20] In this regard, we note the arguments of several parties that any entry into the telegraph business by the Postal Service would be *ultra vires*. Comments have been received containing numerous citations to the legislative history of the 1943 amendments to the Communications Act, most of which indicate vehement congressional opposition to government entry into the domestic communications field. It is not our role to determine whether the Postal Service's proposed offering is *ultra vires*, however, and we appropriately defer to the judiciary on this issue, *see Stark* v. *Wickard*, 321 U.S. 288 (1944), or to congressional action.

[21] Indeed, the Postal Service has recently sought to increase its monopoly control over physical delivery by expanding the application of the Private Express Statutes to encompass delivery of all electronic communications except traditional "telegrams," which it defines as messages received in oral or written form and manually entered into transmitters by alpha-numeric keyboards. 43 FR 60615–60620 (December 28, 1978).

[22] *See e.g.* Comments of Telenet Communications Corp. at 3–4.

[23] Compare, for example, *Communications Engineering, Inc.*, 15 FCC 2d 644 (1968), where we noted that the Alaska Communications System was not subject to our jurisdiction. See 48 U.S.C. § 310. Even there, however, when the ASC requested the use of certain non-governmental frequencies, and its proposal was mutually exclusive with an application by a private carrier for microwave facilities, this Commission exercised its jurisdiction to determine which of the proposals would better serve the public interest.

[24] 39 U.S.C. 3622.

*Express Mail and Mailgram*, PRC Docket MC 76–1–4, issued June 15, 1977.

41. Even if it is ultimately established that the Postal Rate Commission has some regulatory jurisdiction over portions of the ECOM service; however, we do not believe that irresolvable conflicts with this Commission would necessarily result. In such a situation the Postal Service may merely be required to satisfy the regulatory requirements of both this Commission and the PRC when it seeks to embark upon communications enterprises. In any event, we do not believe that the avoidance of possible regulatory conflicts can be our sole or primary objective where achievement of the particular aim would also substantially interfere with the performance of our statutory responsibilities under the Communications Act. See *North Carolina Utilties Commission* v. *FCC*, F.2d 787 (4th Cir. 1976).

42. Having addressed the issue of our jurisdiction over the Postal Service's provision of ECOM service, we turn now to Western Union's role. Western Union maintains that, under the unique factual circumstances involved in ECOM, its provision of facilities to the Postal Service constitutes "contract" carriage rather than common carriage subject to FCC jurisdiction. Thus it contends that its role in the service is not "common carriage" because it is not holding out a communications service to the general public or any segment thereof. Instead, it submits that the services offered by it here are tailored to meet the particular specifications of only one entity, the Postal Service. [25] Western Union also argues that ECOM differs significantly from Mailgram, a service which Western Union holds out to the general public, in that the Postal Service has the sole responsibility for public marketing of ECO, as well as customer billing and collection.

43. Despite Western Union's argument, it is clear that under established Commission policy and precedent Western Union is also functioning as a common carrier: Western Union is in the business of offering transmission capacity to the public for various purposes; its arrangement with the Postal Service and the latter's provision of ECOM is simply one example of its normal business activities. Moreover, the fact that the Postal Service intends to resell the service to the general public does not preclude Western Union from being a common carrier with respect to this transaction. [26]

44. However, because this Order makes clear for the first time our decision that the Postal Service is providing a common carrier service when it offers ECOM, we will not here finally resolve the issue of whether provision by Western Union of transmission services to the Postal Service may be conducted under a contract. Sole reliance on contractual arrangements for the underlying transmission facilities associated with ECOM may be inappropriate, especially in view of Western Union's existing Mailgram tariff. Depending on the price and other characteristics established for ECOM, it may be functionally equivalent to Mailgram. It is already clear that the underlying transmission facilities for ECOM will be virtually identical to those available under Western Union's Mailgram tariff. The facilities which Western Union proposed to make available to the Postal Service are not unique; they should therefore be made available to all carriers pursuant to the same terms and conditions.

45. On the other hand, or finding that both Western Union and the Postal Service will be functioning as communications common carriers in the provision of ECOM could invoke the provisions of Section 211(a) of the Act, [27] in conjunction with other relevant statutory provisions. [28] That issue has been relatively unexplored by the Commission [29] and has not been extensively briefed on this record. Therefore, we are not at this time resolving those questions. We believe it would be more appropriate to consider whether Western Union's involvement with ECOM should be pursuant to contract or tariff when we consider Western Union's pending application for review of the Bureau Chief's rejection of its ECOM Tariff (Transmittal No. 7467). [30]

46. In sum, while we are not addressing the question of whether inter-carrier agreements are appropriate, we wish to make clear that any such contracts or agreements may not be used to circumvent regulation that we determine to be mandated under the commission's statutory jurisdiction.

*Conclusion*

47. The Petition for a Declaratory Ruling is granted insofar as it requests a determination of the jurisdictional status of the entities involved in offering the proposed ECOM service. In issuing this ruling, we conclude that:

(a) The proposed ECOM service is a common carrier telecommunications service subject to the the jurisdiction of this Commission, and the status of the Postal Service as a governmental entity does not exempt it from FCC jurisdiction.

(b) In the provision of ECOM the Postal Service would be a communications common carrier and subject to such provision of the Act as are applicable to such common carriage. Before implementing ECOM, the Postal Service must file for and obtain a certificate of public convenience and necessity pursuant to Section 214 of the Communications Act, 47 U.S.C. 214. Moreover, since ECOM is being offered as an end-to-end service, with the delivery aspect constituting an integral component of the common carrier offering, a tariff for the service must be filed with the FCC pursuant to Section 203 of the Communications Act, 47 USC 203.

(c) In its participation with Postal Service in the provision of ECOM, Western Union would also be a communications common carrier and subject to such provisions of the Act as are applicable to such common carriage.

48. Accordingly, it is ordered, that the Petition for Declaratory Ruling and Investigation filed by Graphnet Systems, Inc. is granted to the extent provided herein and is otherwise denied.

49. It is further ordered, that CC Docket No. 79–6 is hereby terminated.

Federal Communications Commission. [31]

William J. Tricarico,

*Secretary.*

Appendix A.—Summary of Comments

*Aeronautical Radio, Inc.* The historic difficulties of the USPS in meeting competition might create a temptation for the agency to broaden the current reach of the

[25] Western Union believes that FCC jurisdiction over ECOM turns on whether ECOM is a mail service that can be offered by the Postal Service. Thus, it concludes that if another entity were to offer ECOM, the Commission would in all likelihood have jurisdiction over it. It submits, however, that the unique status of the Postal Service as a governmental entity removes ECOM from the Commission's jurisdiction.

[26] *See Resale and Shared Use, supra, note. 19.*

[27] Assuming no policy to the contrary, Section 211 of the Act allows for inter-carrier agreements, as opposed to carrier-customer agreements. *See Bell Telephone Company of Pennsylvania* v. *FCC*, 503 F.2d 1250 (3 Cir. 1974), *cert. denied* 422 U.S. 1026 (1975), *reh. denied* 423 U.S. 886 (1975).

[28] *E.g.*, 47 U.S.C. 151, 154, 201(b), 203(c), etc.

[29] *But see Bell System Tariff Offerings*, 46 FCC 2d 413 (1974) *aff'd sub nom. Bell Telephone Company of Pennsylvania* v. *FCC*, 503 F.2d 1250 (1974).

[30] *In the Matter of Western Union Telegraph Company, Facilities for Use by United States Postal Service*, Tariff F.C.C. No 271. Because of our decision to address the contract/tariff issue as part of the pending application for review, we intend to re-open the comment period on the application to afford parties an opporunity to address this issue.

[31] See attached Concurring Statement of Commissioner Tyrone Brown and Dissenting Statement of Commissioner Anne P. Jones.

Private Express Statutes to include some forms of electronic communications, thereby establishing a USPS monopoly over those services and excluding private firms from the business. The FCC should assert jurisdiction in order to preclude the classification of ECOM as a form of first class mail subject to the Private Express Statutes. Having done so, however, it should impose minimal regulatory burdens. Specifically, Western Union should be permitted to provide facilities to USPS by contract rather than tariff. Contracts are better than tariffs because tariffs are subject to unilateral change on 90 days' notice, while contracts can be relied upon for longer periods.

*American Bankers Association.* ECOM should be treated as consisting of two services—an electronic portion, to be regulated by the FCC, and a physical delivery portion, to be regulated by the Postal Rate Commission. The ABA's position is subject to the caveat that its support for ECOM is premised on an assumption that it will not be treated as a form of first class mail subject to the private express laws. The FCC should regulate Western Union but not the Postal Service.

*American Cable and Radio Corporation.* The Postal Service's involvement in ECOM places it in the category of resale common carriers, which have been declared subject to FCC jurisdiction. USPS should therefore be required to file an application for a Section 214 certificate. Before issuing such a certificate, the FCC should examine whether USPS is proposing to take actions which fall within its statutory charter and whether its sole-source contract with Western Union violates the letter or spirit of the antitrust laws. The FCC should exercise its discretion not to regulate physical delivery of ECOM messages. However, tariffs regulating the electronic portion of the service should cover USPS allocated costs for billing, marketing, and use of post office space for terminal equipment.

*American Facsimile Systems, Inc.* AFSI is currently organizing a telecopier network which will require interconnection with local first class mail delivery by the Postal Service. The FCC should exercise its jurisdiction to require non-discriminatory access to such service. USPS's dominant position and control over local mail delivery will be analogous to the Bell System's monopoly control over local exchange distribution facilities. Just as the specialized carriers needed non-discriminatory and reasonable access to exchange facilities to compete successfully with the services of AT&T Long Lines, it can be expected that AFSI and other potential competitors will need similar guaranteed access in order to compete with USPS's intercity telecommunications services.

*American Newspaper Publishers Association.* Many activities of ANPA's members involve the physical delivery of information that at one point was transmitted electronically, *e.g.* a newspaper containing a news service story. ANPA's sole concern in the ECOM proceeding is that the FCC avoid making overly broad statements with respect to its jurisdiction over physical delivery of such messages.

*American Satellite Corporation.* USPS appears intent upon using the Private Express Statutes to carve out a monopoly for some, if not all, forms of record communications services. The FCC should preclude such a development by declaring that it has jurisdiction to regulate USPS as a resale carrier.

*American Telephone and Telegraph Company.* ECOM is a communications common carrier service which can and should be regulated in its entirety by the FCC. Such a service would be beyond the Postal Service's statutorily authorized powers, but, even if the FCC believes that USPS would not be acting *ultra vires*, it could refuse to grant a Section 214 certificate on the ground that Postal entry would be contrary to the public's interest and necessity. If USPS is allowed to enter the market, the FCC should regulate rates on an "end-to-end, customer premises-to-customer premises basis." There is a great danger of anticompetitive cross-subsidization because half of the Postal Service's costs are not directly assignable to any particular service. Recent actions by USPS raise serious doubts as to whether the Service will attempt to extend the Private Express Statutes to create a monopoly for ECOM. For example, on December 28, 1978, after proposing ECOM, USPS issued a Notice of Proposed Rulemaking which contemplated a definition of "telegrams" to include only messages received at public offices in oral or written form and manually entered into transmitters by alphanumeric keyboards. On February 28, 1978, the Postal Rate Commission stated that, if it were to approve ECOM as a subclass of first class mail, then it would fall under the Private Express Statutes, thereby preventing other carriers from engaging in such services. Whatever protestations USPS may make at the present time, the agency may be expected to show greater zeal in enforcing the Express Statutes when its own pecuniary interest is at stake. In this regard, it should be noted that ECOM would give USPS a pecuniary interest in enforcement action not only against closely analogous services using physical delivery, but also against end-to-end telecommunications services that may be cross-elastic with ECOM. Even assuming the frankness of USPS's current disavowals of any intention to construe the Express Statutes more broadly, the danger that it could someday change its mind could severely dampen the willingness of private investors to finance entry into the market.

*Chase Manhatten Bank.* Chase states its intention to monitor the ECOM proceeding closely because of its interests both as a user of electronic mail and as a financial institution.

*Computer and Business Equipment Manufacturers Association.* The heart of the issue is whether or not the Postal Service is a "person" within the meaning of the Communications Act. Specific exemptions for government agencies shows that Congress, when enacting the 1934 legislation, knew how to exempt government; it did not exclude such entities from regulation under the common carrier provisions. The fact that the courts have held most of USPS's operations not to be governmental in nature, that its powers are common to any business organization, and that it functions in the commercial world, as opposed to the exclusively governmental arena, provides additional reason to conclude that the Postal Service's ECOM offering would not be exempt. Jurisdiction includes physical delivery as well as the electonic portion, but the FCC has broad discretion to refrain from regulating resellers. In general, CBEMA favors minimal regulation of resellers, but the Postal Service can be treated as a special case because of Congress's policy against government involvement in the communications industry. Although USPS should be treated like any "similarly situated" private carrier, the Commission should note that the Postal Service possesses significant competitive advantages over other potential entrants into the record communications market: it pays no taxes, receives subsidies from Congress, has a *de jure* monopoly over the carriage of certain types of mail, and may not be subject to the antitrust laws.

*Computer and Communications Industry Association.* The Postal Service should be limited to physical delivery functions; electronic transmission should be provided on a competitive basis by private carriers which interconnect with post offices. The net effect would be to stimulate business for USPS while maintaining the present open market for electronic communications.

*Computer Corporation of America.* The FCC has jurisdiction to regulate all aspects of ECOM, but it should forbid the Postal Service to offer electronic transmission services. Such activities are *ultra vires*, but, even if they weren't, the FCC could prohibit Postal entry on public interest grounds. The FCC should assert jurisdiction only for the purpose of requiring USPS to provide non-discriminatory access to its facilities by private carriers.

*DHL Communications, Inc.* USPS's recent attempts to expand the application of the Private Express Statutes was caused by the FCC's proposal, later implemented, to declare an open entry policy for public message services. Though such offerings could include telegrams in their tranditional format, it is more likely that new entrants will provide services which are more directly substitutable for first class mail, including public facsimile transmission. Postal entry into the electronic record communications market is directly contrary to Congressional intent, as expressed both in the 1934 Communications Act and in post-World War I legislation taking the Post Office Department out of the telegraph business. If USPS is allowed to enter, the FCC should assert complete jurisdiction in order to ensure nondiscriminatory access to its delivery facilities.

*Graphnet, Inc.* The USPS will be a communications common carrier if it proceeds with the ECOM offerings, and it will be a "person" under normal rules of statutory construction. ECOM could have a major disruptive effect on the FCC's pro-competitive policies enunciated in its *Resale and Shared Use, Domestic Satellites, Specialized Common Carriers,* and *Public Message Services* decisions. With the

passage of the latter ruling in January of 1979, the entire domestic record communications market was opened to competition, but ECOM could expose private entrants to competition from a tax-free, government-subsidized entity with bottleneck control over most local physical delivery. USPS estimates that ECOM will reach a volume which exceeds all of Western Union's business within two years, or 35 million messages. It estimates the potential message volume for ECOM at 15.6 billion per year. Absent FCC regulation, private carriers competing with USPS could be exposed to discrimination and cross-subsidization. The Mailgram precedent is inapposite because it was rendered at a time when Western Union was the only domestic record communications carrier; no questions of discrimination could have arisen at that time. Bifurcated regulation of electronic transmission and physical delivery would be inadequate because ECOM is a unified service. The FCC should regulate ECOM on an end-to-end basis, including control of entry and tariff standards.

*GTE Service Corporation.* The primary concern is that the FCC take whatever steps are necessary to prevent the Postal Service from expanding the application of the Private Express Statutes. The initiation of ECOM should not, directly or indirectly, preclude private sector offerings which may compete with ECOM or with any component thereof.

*International Business Machines Corporation.* IBM takes no position here on whether or not USPS would be within its statutory powers in offering ECOM; that is a question which should be decided in forums other than the FCC. If USPS does offer ECOM, it would at most be a mere reseller, and IBM has consistently maintained that resellers should not be regulated. The FCC itself has asserted that it has left open the question of whether or not it has discretion to refrain from regulating resellers. In its brief submitted in opposition to a petition for a writ of certiorari in *Internation Business Machines Corp.* v. *FCC,* No. 77-1540 at 5-7 (July 1978), the Commission disavowed contentions by its counsel before the Second Circuit that the Commission lacked forbearance power. *AT&T* v. *FCC,* 572 F.2d 17 (2d Cir.), cert. denied, 99 S.Ct. 213 (1978), is therefore mere *dicta* with no binding effect requiring resale regulation.

*MCI Telecommunications Corporation.* The true threat which ECOM presents to the telecommunications industry and to the public was made manifest by the position taken by USPS in its proposed rule making proceeding to expand the scope of the definition of the word "letters" in the rules implementing the Private Express Statutes. Its clear purpose was to extend its monopoly to cover all record communication services except for "telegrams" in their traditional form. The FCC must act quickly and forcefully to assert its jurisdiction over ECOM.

*National Association of Letter Carriers, AFL-CIO.* The FCC should not assert jurisdiction over the Postal Service because USPS is not a "person" within the meaning of the Communications Act and because the FCC lacks expertise to regulate matters such as the impact of ECOM on postal rates and the fiscal condition of the Postal Service.

*Pitney Bowes, Inc.* The imposition of the Communications Act's requirements for "just and reasonable" and non-discriminatory charges upon the Postal Service would force USPS to act in a manner which is inconsistent with its own statute. The Postal Reorganization Act, unlike the Communications Act, does not require that rates charged customers must reflect the true cost of service. Rather, its "reasonable and equitable" standard places primary emphasis on a universal service philosophy. The Postal Service may price its services so that each type of mail service bears the direct and indirect costs attributable to it, as well as "that portion of all other costs of the Postal Service reasonably assignable to such class or type." 39 U.S.C. 3622(b)(3). The two statutory schemes are clearly incompatible. With respect to the private carriers' fears that ECOM will bring an expanded definition of the Private Express Statutes, they should note that any Postal Rate Commission interpretation of those enactments should not depend upon the existence of a prior offering by USPS. The PRC has amended its earlier view that authorization of ECOM would lead by implication to an expanded interpretation of the Express Statutes. Prior FCC decisions do not support the classification of USPS as a "person." The FCC was free to regulate the Puerto Rico Telephone Company because it is a corporation; USPS is not. The FCC's refusal to regulate the Air Force in *Communications Engineering* is clear precedent for the proposition that a federal entity is not a person.

*Plexus Corporation.* Plexus's main concern is that the FCC, in exercising jurisdiction over ECOM and similar electronic message services, could unintentionally include other electronic, remote access, data processing services within its regulatory sweep. The decision in this proceeding should be worded narrowly, so as to avoid asserting jurisdiction over services such as Plexus's Info-Plex offering, in which data is transmitted to one central location for processing and retransmitted to a destination different from the originator of the data.

*RCA Global Communications, Inc.* Not only does the FCC have jurisdiction to regulate the Postal Service, but it will not have discretion to refrain from doing so if USPS proceeds with ECOM. Section 1 of the Communications Act states a clear intent to centralize authority over telecommunications, and 601(b) specifically transfers all Post Office powers and duties with respect to telegrams to the FCC. The FCC may require the Postal Service to obtain a certificate of public convenience and necessity before inaugurating ECOM, and it may also impose tariff requirements. Conflict with the Postal Rate Commission can be avoided if the FCC defers to the PRC's judgment with respect to appropriate rates for physical delivery. The simplest way to avoid conflict, however, would be for USPS to heed the advice given by Postmaster General Bailer in March, 1977: "If private industry is willing to provide a service, why in heaven's name should the Government get involved?" (*The New York Times,* March 10, 1977, p. 49).

*Satellite Business Systems.* The Postal Service's proposed role in ECOM places it clearly within the category of resale common carrier communications, which means that it must obtain a Section 214 certificate and file a tariff with the FCC covering both the electronic and physical delivery portions of ECOM. The FCC's policy of favoring competition should not be thwarted by an inappropriate application of the Private Express Statutes or by allowing any entity, whether governmentally established or not, to subsidize its communications offerings with revenues from monopoly services.

*Southern Pacific Communications Company.* With the Postal Service's entry into the electronic message market, the continuance of competitive development of that market under FCC policies is threatened. The Postal Service could undercut its private competitors by using its Federal subsidies and its monopoly revenue from the mails to subsidize ECOM. Moreover, with its control over the mails, the Service is in an excellent position to discriminate among carriers seeking to contract for delivery of hard copy. To protect against such abuses, the FCC should assert end-to-end jurisdiction over USPS's role in ECOM. The Commission should defer deciding the precise nature of regulation to assert until it has gathered more information. It can later decide whether to require the "unbundling" of charges for Western Union's portion and the Postal Service's portion of ECOM; whether and to what extent the Commission should defer to the Postal Rates Commission to oversee certain of the unbundled charges; and whether to give ECOM the same regulatory treatment given Mailgram. While such questions cannot be finally resolved on the basis of the factual record to date, the FCC should be prepared to require Section 214 applications, Section 203 tariff filings, and Sections 201 and 202 compliance from both Western Union and the Postal Service.

*Telenet Communications Corporation.* The FCC should assert jurisdiction over the Postal Service, require it to file a Section 214 application for a certificate of public convenience and necessity, and deny the application on public interest grounds. Allowing USPS to enter the electronic communications business would lead to regulation to prevent cross-subsidization and discrimination, but such regulation would be ineffectual. While the Commission has struggled valiantly, with only limited success, to develop mechanisms to address problems of cross-subsidy in its regulation of AT&T and other monopoly carriers, the very nature of USPS is such that even those mechanisms would be grossly inadequate. The extensive local distribution facilities controlled by USPS constitute a national resource which could not, as a practical matter, be duplicated by any other organization wishing to provide a telecommunications service with hand delivery of messages. If USPS enters the intercity telecommunications market, it will have strong incentives to discriminate against private carriers in favor of its own subsidiary. Since regulation would be ineffectual in preventing such anti-competitive practices, the FCC should forbid USPS to enter the electronic communications

market at all, except for the purpose of providing physical delivery of messages transmitted by private carriers.

*United States Independent Telephone Association.* USITA's members are concerned that USPS appears to be making an effort to establish a government monopoly in the transmission and delivery of non-voice electronic communication. In that context, USITA applauds and fully supports the Commission's straightforward and vigorous defense of its regulatory jurisdiction over electronic communications.

*United States Postal Service.* USPS is not aware of any rule of statutory construction which would support the proposition that it is a "person" within the meaning of the Communications Act; therefore it is not subject to FCC jurisdiction and does not have to file tariffs or applications for certificates of public convenience and necessity. At present the Service is using a single serving carrier, Western Union, but when ECOM is more fully developed it will welcome competition among communications carriers for customer-to-post-office traffic. The Postal Service is a federal instrumentality which is already subject to a detailed scheme of federal regulation which includes judicial review, Congressional oversight, General Accounting Office audits, and the processes of the Postal Rate Commission. Addition of another layer of regulation by the FCC would create a Gordian knot.

*United Telecom Service, Inc.* United does not file substantive comments but states that it will closely monitor the proceeding.

*Western Union International, Inc.* The ECOM participants have carefully structured the offering with a view toward avoiding FCC jurisdiction, placing the service under the Private Express Statutes, and avoiding Congressional review. The same service could have been provided by means of Computer Originated Mailgram, which has the same functional characteristics. The FCC should assert end-to-end jurisdiction. Regulation of physical delivery by the FCC is necessary to ensure that there will be equal access by competitive carriers. If the FCC decides to classify USPS as a resale carrier, it should not feel constrained to apply the open entry standard set forth in its *Resale and Shared Use* decision. The rationale for that holding was a belief that an inherent characteristic of the resale market is competition, but USPS's bottleneck control over delivery and its penchant for exclusive dealings with Western Union Telegraph Co. have created a situation in which competitive entry is severely restricted.

*Western Union Telegraph Company.* Western Union's involvement in ECOM does not constitute common carriage because Western Union is not holding out a service to the public; it is providing services tailored to the needs of a single user. The fact that Western Union happens to engage in common carrier activities in other areas is not dispositive; the FCC and court decisions have held that common carriers may involve themselves in business which do not constitute common carriage or subject them to regulation, such as the sale of flowers, candy, and gifts. ECOM is offered solely by the Postal Service. Since it is clear that, if an ECOM-like service were offered by a private entity, it would be subject to FCC jurisdiction, the key question is whether or not the FCC can regulate a sister agency of the federal government. Nothing in the Communications Act or Commission precedent would indicate that such authority exists. Fears that the Postal Service plans to expand the Private Express Statutes to protect an ECOM monopoly are grossly exaggerated, but in any case the FCC has no jurisdiction to construe those laws, nor could it properly condition a 214 certificate to USPS so as to require that agency to reach any conclusions with respect to the Express Statutes. Likewise, charges that USPS is discriminating by agreeing to contract only with Western Union are unfounded; anyone is free to deposit materials for delivery by mail on terms equally available to all.

*Xerox Corporation.* In passing the Communications Act Congress desired to centralize federal control over interstate communications. Nothing in the Act manifests an intent to fragment that authority when a governmental entity enters the market as a common carrier. On the contrary, such entry requires even more careful regulatory scrutiny because of its possible competitive impact. FCC regulation should cover ECOM on an end-to-end basis. The "all instrumentalities" language of the Act, which gives the Commission jurisdiction over ancillary services such as physical delivery, is based on the Hepburn Act amendments to the Interstate Commerce Act. Those provisions were passed when, after enacting the basic statute authorizing regulation of carriers, Congress learned that certain companies were evading the effect of the law by charging publicly regulated rates to everyone but negotiating private rates for ancillary services.

## Appendix B.—Letter from the Acting Chief, FCC Common Carrier Bureau, to Western Union Telegraph Company

November 9, 1978.

Federal Communications Commission,
*Washington, D.C., November 9, 1978*

Mr. Joel Yohalem, Esquire,
*General Solicitor, Western Union Telegraph Company, Suite 1101, 1828 L Street, N.W., Washington, D.C.*

Dear Sir: This in reply to your letter of September 15, 1978, describing Western Union's role in a proposed new offering with the United States Postal Service. Your letter states that a new service, denoted Electronic Computer Originated Mail (ECOM), using Western Union's switching and communications facilities, will be offered to the public solely by the Postal Service and not by Western Union, and that Western Union's offering of these facilities to the Postal Service is not a common carrier undertaking. Accordingly, you conclude that Western Union and the Postal Service can order their relationship by contract (and not filed tariff) and that Western Union may fulfill its regulatory obligations by filing a report pursuant to Section 43.54 of the FCC's Rules.

In addition to your letter, we have also received an October 16, 1978, letter from Western Union International, Inc., which expresses concern about possible erosion of Commission jurisdiction if it allows Western Union to participate in ECOM without filing a tariff, an October 23, 1978 letter from American Cable and Radio Corporation requesting the FCC to institute an inquiry into ECOM, and a November 1, 1978, petition for declaratory ruling from Graphnet Systems, Inc., raising questions about the scope of Commission jurisdiction over ECOM and Western Union's participation therein.

According to your letter, a user of ECOM will prepare its messages in electronic form and transmit them over wires to Western Union's facilities, which will check for proper format and sequentially order them by zip code. Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destination post offices as indicated by the zip coding. There, Western Union-provided printers will convert the messages to hard copy form for physical delivery by postal employees. In the preliminary phases, intended to last 15 months, during which the Postal Service will evaluate public acceptance of ECOM, Western union will use its Infomaster system to route and switch messages to the appropriate post offices. According to your letter, customer-originated messages in electronic form will be received by Infomaster over the nationwide telephone network (WATS and MTS service). It is not clear whether or not Infomaster will also accept ECOM messages over its existing TWX, Telex and INFO-COM input mechanisms. If the Postal Service's evaluation indicates public acceptance, you propose to switch to domestic satellite facilities and "a dedicated network of intelligent, computer controlled small earth stations" both to accept the user's ECOM messages in electronic form and to distribute ECOM messages to appropriate post offices.

You characterize the offering of Western Union's facilities for the electronic portion of the ECOM service as one which runs solely to the Postal Service and not the general public, and conclude that providing such service to the Postal Service is not a common carrier offering requiring a tariff. Moreover, you propose to file no tariffs offering ECOM (or its electronic portion) to the public because, in your view, ECOM is to be marketed solely by the Postal Service and not Western Union. We have reviewed the representations made in your letter, and conclude for the reasons detailed below that Western Union must file a tariff which covers the provision of this service.

First, the Postal Service and the ECOM-using public will be using Western Union's Infomaster and communications facilities in a manner which is no different from their use by other users of these facilities, all of which other uses are currently regulated and governed by filed tariffs (*e.g.*, TWX, Telex, INFO-COM and MAILGRAM). Your sole argument in support of different treatment of use of these facilities by the Postal Service and the ECOM-using public is that only the Postal Service, and not Western Union, will be "holding out" ECOM to the using public. However, this argument appears to relate only to whether or not the Postal Service might be required to file a tariff with the

Commission; it does not, of itself, justify Western Union's offering of its facilities in connection with ECOM on a non-carrier basis. In our view, Western Union's long standing and consistent tariffing of these facilities for other purposes clearly demonstrates the common carrier nature of their use in a similar manner for ECOM. In essence, the claim that one user (or group of users) of your facilities will be doing so with an objective different from existing users does not, of itself, justify calling provision of service to the former a non-carrier activity.

Second, use of the Infomaster and communications facilities for ECOM will apparently be compensated at a rate different from those prevailing for Western Union's other tariffed services. Such discrimination may not be unjust or unlawful, but that is a regulatory determination which is to be made on the basis of tariffs, and cannot be avoided by calling the offering non-carrier, or claiming that it is provided on an agency or contractual basis.

Third, the ECOM service is substantially identical to Western Union's tariffed MAILGRAM offering in scope, service, operation and facilities. MAILGRAM is also an end-to-end communications offering in which messages are accepted in electronic form at Western Union's facilities, are transmitted electronically by Western Union to appropriate post offices, are printed out in hard copy form on Western Union-provided apparatus, and are delivered by postal employees. Western Union has tariffed the electronic communication segment of this end-to-end offering with the FOC in clear recognition that this is the type of interstate communications subject to the Communications Act of 1934. While you argue that ECOM and MAILGRAM differ inasmuch as the former will be the Postal Service's offering to the public and the latter is Western Union's, this difference does not alter the fact that the two services are virtually identical and make similar use of facilities provided by Western Union. The similarity of ECOM and MAILGRAM dicatates consistent treatment by the Commission of Western Union's participation therein. Also, this similarity raises serious questions of discrimination between ECOM and MAILGRAM users of Western Union's facilities, since it appears that Western Union will be compensated at a lower rate for ECOM use than for MAILGRAM use. Here too, such discrimination may not be unjust or unlawful, but that is a regulatory determination which must be made by the Commission on the basis of the statutory scheme envisioned by Title II of the Communications Act.

Fourth, a more fundamental issue of potential cross-subsidization is raised by Western Union participating in ECOM as described in your letter. Without regulatory safeguards such as the cost studies required to support a new tariff filing under Section 61.38 of the Commission's rules, we are unable to determine to what extent, if any, the compensation which you will be receiving for use of your facilities for ECOM is adequate (covers relevant costs). Any shortfall might be required to be made up by users of your existing regulated services. Moreover, demand shifts by users of your existing services to ECOM may affect your revenues and your ability to cover your revenue requirements at existing rates. This too dictates that the normal regulatory safeguards of the Communications Act be observed in connection with Western Union's participation in ECOM.

Finally, you observe that the Commission has allowed Western Union to engage in certain undertakings on a non-carrier basis. This is true, but in each case the undertaking was not interstate communications by wire or radio used by the public (*e.g.* delivery of candy and flowers, communications totally in foreign countries, performance of professional accounting, legal or engineering services). The facilities which you will be providing in connection with ECOM are undeniably interstate communications by wire or radio, except in the unlikely event a particular communication originates and terminates in the same state (a situation which presumably can only occur in the case of wire communications).

Though Graphnet Systems, Inc. has filed a petition for declaratory ruling seeking a Commission decision concerning the scope of its jurisdiction over the entire ECOM service, we are not taking a position at this time on the broad set of issues raised by that petition; these will be addressed in the procedural setting of Graphnet's petition. We are addressing here solely your participation in ECOM without a tariff filed with the Commission. As noted above, the facilities and services which Western Union will be providing in connection with ECOM do not differ in any material respect to facilities and services which you are already providing to users of Western Union's existing tariffed services, and you have failed to justify different treatment of the Postal Service and the ECOM-using public from others. Your participation in ECOM raises significant potentials for discrimination against various users of Western Union's existing tariffed services, and this further dictates that a tariff be filed, properly supported pursuant to Section 61.38 of the FCC's rules. Moreover, we note that filing such a tariff would be consistent with and parallel to the existing electronic mail service (MAILGRAM) which is jointly furnished by Western Union and the Postal Service, and therefore represents no new departure in Commission policy.

I trust that this clears up any uncertainty about your proposed service offering.

Sincerely,

Larry F. Darby,

*Acting Chief, Common Carrier Bureau.*

**Concurring Statement of Commissioner Tyrone Brown**

Re: *Request for Declaratory Ruling and Investigation By Graphnet Systems, Inc., Concerning a Proposed Offering of Electronic Computer Originated Mail (ECOM) CC Docket No. 79-6*

I concur in the Commission's decision holding that the proposed ECOM service is a telecommunications service subject to the jurisdiction of the FCC and that the Postal Service in offering ECOM and Western Union in providing transmission lines are both common carriers within the meaning of the Communications Act of 1934 and thus are subject to our jurisdiction.

I emphasize that our decision—especially our conclusion that we have jurisdiction over the Postal Service—is a very narrow one. It is narrow in the sense that we do not hold that all Postal Service involvement in the electronic communications subjects it to this Commission's jurisdiction, but only that, as a legal matter, in offering ECOM the Postal Service meets all of the requirements of the Communications Act to subject it to our jurisdiction. We have only decided that this Commission possesses subject matter jurisdiction and jurisdiction over the Postal Service. While I am not sure whether it would be sound policy to exercise that jurisdiction over USPS far as the delivery aspect of ECOM is concerned, we will have the opportunity to address this issue when USPS files a tariff for ECOM. At that time we can determine the extent to which we will involve ourselves in the hard copy delivery segment of ECOM.

This point I wish to emphasize: If traditional mail service can be made to run more efficiently by using new electronic technology, it is not the place of this Commission to impede that progress. Where the dividing line between "traditional" service and private competitive services should be drawn (on the law and in policy) is a matter on which Congressional guidance would be welcomed by this Commissioner. Otherwise, we will have to proceed via the slow and tedious route of adjudication in particular cases.

In this regard it should be noted that the Administration's position on the role of the U.S. Postal Service in electronic mail apparently would avoid the kind of conflict which ECOM may present. President Carter's recent statement (attached as an appendix) endorses the Postal Service's entry into electronic mail subject to eight conditions "to ensure that all forms of electronic communications will be open to full and fair competition."

Importantly, one condition is that the "USPS should make its delivery services available to all electronic carriers at the same rates as those it charges itself." The President's statement also states:

The existing regulatory system should be used to regulate the prices of the new services; *i.e.*, the Federal Communications Commission should regulate the pricing of the electronic transmission portion of the electronic message service and the Postal Rate Commission should regulate the pricing of mail delivery. This regulatory system should be re-examined after five years to determine whether any statutory change is needed.

My current inclination would be to forebear in an exercise of this Commission's jurisdiction where, as the President's statement indicates, we have assurance of nondiscriminatory terms and conditions for all comers in any offering by the Postal Service.

My concurrence in our holding that this Commission possesses jurisdiction over USPS rests on the proposition that the electronic and the physical delivery portions

of ECOM are fully integrated and form one telecommunications service. My decision on whether and to what extent we should exercise that jurisdiction will rest on fuller development of the record.

Appendix

July 19, 1979.

President Carter today announced the Administration's position on the role of the U.S. Postal Service in electronic mail. The President declared his support for new services proposed by USPS, which will use long distance telecommunications systems to feed messages into the normal mailstream for delivery by postal carriers. At the same time he concluded the USPS should be prohibited from offering end-to-end electronic services.

The services favored by the President will provide faster mail delivery while reducing costs. Mr. Carter's endorsement carries with it eight conditions which will ensure that all forms of electronic communications will be open to full and fair competition. These conditions have been accepted by Postmaster General William F. Bolger.

1. The Administration opposes any legislative or regulatory efforts to restrict competition or entry in the electronic message field. In particular, it opposes any extension of the private express statutes beyond letter mail to cover electronic transmission.

2. USPS electronic operations should not be subsidized by tax money or by revenues from other USPS services.

3. The USPS electronic service should be established as a separate entity for accounting and ratemaking purposes to ensure that it is operated in a competitive fashion and to avoid the cross-subsidization of electronic service by regular mail service.

4. The USPS should make its delivery services available to all electronic carriers at the same rates as those it charges itself.

5. The USPS electronic service will be reviewed within the next five years, before the major investment is made, to evaluate its competitive impact and its potential to improve postal services and to ensure that no cross-subsidies or other anticompetitive actions are involved.

6. The USPS should purchase electronic transmission services from carriers rather than building a transmission network.

7. To ensure that interconnection with the mail delivery system is available to all companies, technical interconnection standards should be developed through a cooperative effort by the American National Standards Institute, the USPS, the private carriers, and an impartial arbiter, if needed.

8. The existing regulatory system should be used to regulate the prices of the new services; *i.e.*, the Federal Communications Commission should regulate the pricing of the electronic transmission portion of the electronic message service and the Postal Rate Commission should regulate the pricing of mail delivery. This regulatory system should be reexamined after five years to determine whether any statutory change is needed.

*Background*

Postal Service use of electronic technology may be seen as a natural evolution of the national postal system which has traditionally taken advantage of new ways of moving the mail as they have become available (stage coach, railroad, trucks, airplanes). On the other hand, it may be seen as the entry of a Government agency into the field of Electronic Message Services (EMS). Although both postal and electronic communications services are provided by the government in most of the developed world, (usually by a PTT—Postal Telephone and Telegraph ministry) this country's electronic communications have been provided by the private sector.

One prospective use by USPS of electronic technology involves a current case before the Postal Rate Commission (PRC) and the Federal Communications Commission (FCC). Under the proposed service, Electronic Computer Originated Mail (ECOM), the Postal Service would solicit and accept electronic data stored in computer files (such as monthly billing information) transmit it electronically around the country (via contracted common carrier), generate the appropriate messages, print them on paper and automatically stuff them into envelopes for the first manual sorting at a post office near the local mail carrier for delivery. The USPS believes it can reduce substantially the handling, labor, and transportation costs that would be associated with regular letter mail and further states that it is required to pass these savings on to the mailer. USPS expects the average price of each electronic message would eventually be 9¢ or 10¢ (1979 dollars) in the 1985–95 period, when a follow-on system called EMSS (Electronic Message Service System) would be established.

The President concluded that it was neither feasible nor desirable for the Postal Service to acquire a monopoly over electronic input and transmission of any proposed offering. Common carriers in that area are regulated under the Communications Act of 1934 by the FCC, whose policy for the past decade has been to stimulate competitive entry. The electronic message industry is increasingly competitive.

The President also concluded that as long as physical delivery through the mails exists as a primary means of communications to a large segment of the population, the USPS should take advantage of electronic communications to improve its service. However, he proposed that the USPS establish an interconnection policy to facilitate electronic message service by private companies to feed into the mail service.

*Terminology*

General knowledge of the terminology used to distinguish the groupings of electronic services is helpful to understand the extent and limits of the Administration's endorsement.

*Generation I.* USPS or electronic carriers accept messages in hard copy form which are converted to electronic impulses for electronic transmission to the destination facility where the messages are reconstructed in hard copy form for subsequent processing, sorting and physical delivery by carriers. (Example: A postal facsimile system with physical delivery by postal carriers.)

Input—hard copy

Output—hard copy with physical delivery by USPS

*Generation II.* USPS or electronic carriers accept messages in electronic form for subsequent electronic routing, processing, sorting and electronic transmission to destination facility where hard copy generation of mail would take place for physical distribution and final delivery by carriers. (Examples: E-COM Generation II and EMSS services as contemplated by USPS.)

Input—electronic

Output—hard copy with physical delivery by USPS

Note.—USPS EMSS services contemplate multi-media message input, i.e., hard copy, magnetic tape, and electronic, a combination of Generations I and II.

*Generation III.* Electronic carrier accepts messages in electronic form for subsequent electronic routing, processing, sorting and electronic transmission to recipient's place of business or residence where a hard copy may or may not be produced. USPS has no plan to provide this service. (Example: Private firms now have such services oriented toward business, and several are testing such services for message display on the home television set.)

Input—electronic

Output—electronic at customer terminal

The Administration's support of USPS entry into Generations I and II is based upon a number of considerations. Among the most important are the following:

1. *Productivity and Efficiency.* The national interest requires a Postal Service which can serve all Americans and interface with the world's postal services efficiently and economically. The Service has progressively achieved productivity improvements by mechanization and automation in processing conventional mail. Since the creation of the USPS in 1971, its mail volume has increased 13 percent (from 87 billion pieces in 1971 to nearly 97 billion pieces in 1978) while its manpower has decreased 11 percent (from 730,000 workers to 660,000). But the future potential in these areas is closing in. A postal EMS is the logical next step to achieve further cost reduction and mail processing improvements. It allows USPS to improve efficiency and economy of mail service by continuing to use technological advances to increase productivity, speed and dependability of services.

2. *Postal Tradition.* EMS Generations I and II are in complete consonance with the USPS historic mission and function. They are clearly distinguishable, from the Generation III end-to-end communications services which the private sector telecommunications carriers provide.

3. *Universal Nationwide Coverage.* USPS Generations I and II concepts adhere to the social and business practices of the mailing public in order to meet the marked needs of households, small and large businesses, rural and urban areas. The major businesses using private telecommunications carriers to interconnect their own plants and offices will need a USPS Generation II, as well as the conventional mail system, to deliver mail throughout the country.

4. *International Electronic Mail.* "Intelpost," is an experimental international service that is scheduled to be provided by the USPS beginning this year. USPS has agreed to arrangements with the postal administrations of several other nations: The United Kingdom, France, Federal Republic of Germany, Belgium, Netherlands, Argentina and Iran. Seven countries have already shown strong interest in participating: Canada, Mexico, Switzerland, Japan, Sweden, Australia and the Peoples Republic of China. The Administration believes it to be in the national interest to go forward with the experiment in order to determine if a genuine market need exists for the service.

The President's decision follows a six-month study coordinated by Domestic Policy Advisor Stuart Eizenstat. These agencies participated in the study: Commerce; Justice; Agricultural; State; Labor; Treasury; NASA; the Postal Service; Council of Economic Advisors; Council on Wage and Price Stability; the Office of Management and Budget; and the Domestic Policy Staff. Primary agency support came from the Commerce Department's National Telecommunications and Information Administration.

**Common Carrier Item 7—August 1, 1979 Agenda**

*Dissenting Statement of Commissioner Anne P. Jones*

I dissent to the Commission decision asserting jurisdiction over ECOM. I do so not because I think we cannot assert jurisdiction. I think a plausible case can be made for our statutory power to do so. Neither is the reason for my dissent that I am *convinced* we should not assert jurisdiction. Perhaps a case can be made that our jurisdiction is necessary to promote the public interest by preventing anti-competitive activities in this emerging field. However, as of the present, that case has not been made. There is lettle evidence that the Postal Service, and the Postal Rate Commission, independent establishments of the Executive Branch of the Federal Government, formed to serve the public interest, 39 U.S.C. secs. 101, 201, 3601, 3603, cannot protect that interest as well as this Commission. Indeed, the Postmaster General has already accepted several conditions proposed by President Carter aimed at alleviating potential anti-competitive problems. These include:

(1) USPS electronic operations should not be subsidized by tax money or by revenues from other USPS services.

(2) The USPS electronic service should be established as a separate entity for accounting and ratemaking purposes to ensure that it is operated in a competitive fashion and to avoid the cross-subsidization of electronic service by regular mail services.

There was little or no discussion of the role of the Postal Rate Commission, the charter of the Postal Service, or the aforementioned conditions already placed upon this service, in the material presented to the Commission by the staff. Such discussion is essential to a reasoned determination in this area. Excessive regulation often leads to excess cost and delay. Layering one agency of government over another should be avoided except where there is a clear public benefit in doing so.

Given the unusual, commercial-like powers of the Postal Service, 39 U.S.C. sec. 401, perhaps there is some reason to believe that the public interest will be served by FCC jurisdiction. I have not yet seen such a showing. Thus, I think our decision to assert jurisdiction is, at the very least, premature.

[FR Doc. 79-28770 Filed 9-14-79; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL ELECTION COMMISSION

### Opinion and Regulation Index

A new cumulative Index to Advisory Opinions and Opinions of Counsel (discontinued in April, 1976) issued by the Federal Election Commission is now available for purchase in the Public Records Division of the Commission. The updated index includes a subject index, U.S. Code section and CFR section index covering opinions issued from the establishment of the Federal Election Commission in April, 1975 through August, 1979, as well as an F.E.C. Regulation index covering 1977 and 1978 opinions.

Purchase price of the new index is $5.10 to cover duplication costs, payable in advance. Checks should be made payable to: United States Treasurer. Person to contact: Mr. Craig Brightup, Public Records Division, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Telephone: (202) 523-4181.

Dated: September 11, 1979.

Robert O. Tiernan,

*Chairman for the Federal Election Commission.*

[FR Doc. 79-28698 Filed 9-14-79; 8:45 am]
BILLING CODE 6715-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### National Institutes of Health Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for October and November 1979 and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marian Oakleaf, Acting Chief, Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time. All times are A.M. unless otherwise specified.

| Study section | October-November 1979 meetings | Time | Location |
|---|---|---|---|
| Allergy & Immunology, Dr. Morton Reitman, Rm. 320, Tel. 301-496-7380. | Nov. 8-10 | 8:30 | Marriott Hotel, Bethesda, MD. |
| Applied Physiology & Orthopedics, Ms. Ileen E. Stewart, Rm. 350, Tel. 301-496-7581. | Oct. 21-23 | 8:30 | Room 6, Bldg. 31C, Bethesda, MD. |
| Bacteriology & Mycology, Dr. Milton Gordon, Rm. 218, Tel. 301-496-7340. | Oct. 25-27 | 8:30 | Holiday Inn, Chevy Chase, MD |
| Bioanalytical & Metallobiochemistry, Dr. Asher Hyatt, Rm. 310, Tel. 301-496-7733. | Nov. 9 | 9:00 | Holiday Inn, Georgetown, DC |
| Biochemical Endocrinology, Dr. Norman Gold, Rm. 349, Tel. 301-496-7300. | Oct 24-26 | 8:30 | Holiday Inn, Bethesda, MD |
| Biochemistry, Dr. Adolphus P. Toliver, Rm. 318, Tel. 301-496-7516. | Oct. 31-Nov. 3. | 9:00 | Kenwood Country Club, Bethesda, MD |
| Biophysics & Biophysical Chemistry A, Dr. James C. Cassatt, Rm. 236, Tel. 301-496-7060. | Nov. 2-4 | 9:00 | Sheraton Inn, Silver Spring, MD |
| Biophysics & Biophysical Chemistry B, Dr. John B. Wolff, Rm. 236, Tel. 301-496-7070. | Oct. 18-20 | 8:30 | Linden Hill, Bethesda, MD |
| Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058 | Oct. 29-Nov. 1. | 9:00 | Riviera Hyatt House, Atlanta, GA |

| Study section | October-November 1979 meetings | Time | Location |
|---|---|---|---|
| Cardiovascular & Pulmonary, Dr. Constance E. Weinstein, Rm. 339, Tel. 301-496-7901. | Nov. 7-10 | 8:00 | Quality Inn, Anaheim, CA. |
| Cardiovascular & Rental, Dr. Rosemary S. Morris, Rm. 339, Tel. 301-496-7901. | Nov. 8-10 | 8:30 | Quality Inn, Anaheim, CA. |
| Cell Biology, Dr. Gerald Greenhouse, Rm. 2A-04, Tel. 301-496-7020. | Oct. 31-Nov. 2. | 8:30 | Landow Bldg. Rm. A, Bethesda, MD. |
| Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078. | Nov. 4-6 | 8:00 | Marriott Hotel, Bethesda, MD. |
| Communicative Sciences, Dr. Michael Halasz, Rm. 321, Tel. 301-496-7550. | Oct. 23-25 | 8:30 | Linden Hill, Bethesda, MD. |
| Diagnostic Radiology & Nuclear Medicine, Dr. Catherine Wingate, Rm. 219, Tel. 301-496-7650. | Oct. 29-31 | 8:30 | Rm. 7, Bldg. 31C, Bethesda, MD. |
| Endocrinology, Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346. | Oct. 15-17 | 7:00 p.m. | Linden Hill, Bethesda, MD. |
| Epidemiology & Disease Control, Dr. Ann Schlueederberg, Rm. 234, Tel. 301-496-7246. | Oct. 24-27 | 8:30 | Rm. 6, Bldg. 31C, Bethesda, MD. |
| Experimental Therapeutics, Dr. Anne R. Bourke, Rm. 319, Tel. 301-496-7839. | Oct. 24-27 | 1:00 p.m. | Kenwood Country Club, Bethesda, MD. |
| Experimental Virology, Dr. Eugene Zebovitz, Rm. 206, Tel. 301-496-747. | Oct. 22-24 | 8:30 | Rm. 8, Bldg. 31C Bethesda, MD. |
| General Medicine A, Dr. Harold Davidson, Rm. 354, Tel. 301-496-7797. | Oct. 22-24 | 8:30 | Rm. 7, Bldg. 31C, Bethesda, MD. |
| General Medicine B, Dr. William Davis, Jr., Rm. 322, Tel. 301-496-7730. | Nov. 1-3 | 8:00 | Linden Hill, Bethesda, MD. |
| Genetics, Dr. David Remondini, Rm. 349, Tel 301-496-7271 | Oct. 25-27 | 9:00 | Rm. 8, Bldg. 31C, Bethesda, MD. |
| Hematology, Dr. Clark Lum, Rm. 355, Tel. 301-496-7508 | Oct. 25-27 | 8:30 | Holiday Inn, Georgetown, DC. |
| Human Development, Dr. Miriam Kelty, Rm. 232, Tel. 301-496-7025. | Nov. 13-16 | 8:30 | Sheraton Inn, Silver Spring, MD. |
| Human Embryology & Development, Dr. Arthur Hoversland, Rm. 221, Tel. 301-496-7597. | Oct. 24-27 | 8:30 | Holiday Inn, St. Louis, MO. |
| Immunobiology, Dr. James Turner, Rm. 233, Tel. 301-496-7760 | Nov. 7-9 | 8:30 | Linden Hill, Bethesda, MD. |
| Immunological Sciences, Dr. Lottie Kornfeld, Rm. 233, Tel. 301-496-7179. | Oct. 24-26 | 8:30 | Linden Hill, Bethesda, MD. |
| Mammalian Genetics, Dr. Halvor Aaslestad, Rm. 349, Tel. 301-496-7271. | Nov. 1-3 | 9:00 | Rm. 6, Bldg. 31C, Bethesda, MD. |
| Medicinal Chemistry A, Dr. Ronald Dubois, Rm. A-27, Tel. 301-496-7170. | Nov. 7-10 | 9:00 | Holiday Inn, Georgetown, DC. |
| Metabolism, Dr. Robert Leonard, Rm. 334, Tel. 301-496-7091 | Nov. 1-3 | 8:30 | Rm. 4, Bldg. 31A, Bethesda, MD |
| Microbial Chemistry, Dr. Eileen Raizen, Rm. 357, Tel. 301-496-7130. | Oct. 24-26 | 9:00 | Ramada Inn, Falls Church, VA. |
| Molecular Biology, Dr. Donald Disque, Rm. 328, Tel. 301-496-7830. | Oct. 25-27 | 8:30 | Holiday Inn, Bethesda, MD. |
| Molecular Cytology, Dr. Ramesh Nayak, Rm. 222, Tel. 301-496-7149. | Oct. 18-20 | 8:30 | Rm. 7, Bldg. 31C, Bethesda, MD. |
| Neurological Sciences, Dr. Edwin Bartos, Rm. 207, Tel. 301-496-7000. | Nov. 1-3 | 9:00 | Riviera Hyatt House, Atlanta, GA. |
| Neurology A, Dr. William Morris, Rm. 326, Tel. 301-496-7095 | Oct. 31-Nov 2. | 9:00 | Rivera Hyatt, Atlanta, GA. |
| Neurology B, Dr. Willard McFarland, Rm. A-23, Tel. 301-496-7422. | Oct. 29-Nov. 1. | 8:30 | Rivera Hyatt, Atlanta, GA. |
| Nutrition, Dr. John R. Schubert, Rm. 204, Tel. 301-496-7178 | Oct. 24-26 | 8:30 | Rm. 4, Bldg. 31A, Bethesda, MD. |
| Oral Biology & Medicine, Dr. Thomas Tarpley, Jr., Rm. 325, Tel. 301-496-7818. | Oct. 30-Nov. 2. | 8:00 | Linden Hill, Bethesda, MD. |
| Pathobiological Chemistry, Dr. Ellen Archer, Rm. 433, Tel. 301-496-7432. | Oct. 17-20 | 8:30 | Holiday Inn, Chevy Chase, MD. |
| Pathology A, Dr. Harold Waters, Rm. 337, Tel. 301-496-7305 | Oct. 23-26 | 8:00 | Dulles Marriott, Chantilly, VA. |
| Pathology B, Dr. Earl Fisher, Rm. 352, Tel. 301-496-7244 | Nov. 14-16 | 8:30 | Linden Hill, Bethesda, MD. |
| Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408 | Oct. 30-Nov. 1. | 8:30 | Holiday Inn, Bethesda, MD. |
| Physiological Chemistry, Dr. Harry Brodie, Rm. 338, Tel. 301-496-7837. | Nov. 8-10 | 9:00 | Rm. 6, Bldg. 31C, Bethesda, MD. |
| Physiology, Dr. Martin Frank, Rm. 209, Tel. 301-496-7878 | Oct. 25-27 | 9:00 | Rm. 7, Bldg. 31C, Bethesda, MD. |
| Radiation, Dr. Robert L. Straube, Rm. 219, Tel. 301-496-7073 | Oct. 29-31 | 9:00 | Holiday Inn, Chevy Chase, MD. |
| Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318. | Oct. 24-27 | 8:30 | Holiday Inn, St. Louis, MO. |
| Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906. | Nov. 2-3 | 8:30 | Washington Hotel, Washington, DC. |
| Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 336, Tel. 301-496-7771. | Oct. 18-19 | 8:30 | Linden Hill, Bethesda, MD. |
| Surgery & Bioengineering, Dr. Joe Atkinson, Rm. 348, Tel. 301-496-7506. | Oct. 18-19 | 8:30 | Holiday Inn, Chevy Chase, MD. |
| Toxicology, Dr. Raymond Bahor, Rm. 226, Tel. 301-496-7570 | Oct. 23-25 | 8:30 | Holiday Inn, Washington, DC. |
| Tropical Medicine & Parasitology, Dr. Betty June Myers, Rm. 319 Tel. 301-496-7494. | Oct. 24-27 | 8:30 | Connecticut Inn, Washington, DC. |
| Virology, Dr. Claire Winestock, Rm. 309, Tel. 301-496-7605 | Oct. 25-27 | 8:30 | Rm. 10, Bldg. 31C, Bethesda MD |
| Visual Sciences A, Dr. Orvil E. A. Bolduan, Rm. 437, Tel. 301-496-7180. | Oct. 31-Nov. 2. | 9:00 | Holiday Inn, San Francisco, CA. |
| Visual Sciences B, Dr. Luigi Giacometti, Rm. 325, Tel. 301-496-7251. | Nov. 7-10 | 9:00 | Atlanta American, Atlanta, GA. |

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393-13.396, 13.386-13.844, 13.846-13.871, 13.876, National Institutes of Health, HEW)

Dated: September 7, 1979.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 79-28720 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-08-M

## Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, November 16 and 17, 1979, Building 31, Conference Room 11A–10, "A" Wing, National Institutes of Health. This meeting will be open to the public on November 16, 1979, from 9:00 a.m. to 5:00 p.m. to discuss the scientific research program of the Laboratory of Pathophysiology, DCBD. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 17, 1979, from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Alan S. Rabson, Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31A, Room 3A–03, National Institutes of Health, Bethesda, Maryland 20205. (301/496–4345) will furnish summary minutes, rosters of committee members, and substantive program information.

Dated: September 7, 1979.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 79–28723 Filed 9–14–79; 8:45 am]

BILLING CODE 4110–08–M

## National Cancer Advisory Board, Board Subcommittees; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees, October 2–5, 1979, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

Some of these meetings will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Some of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in Section 552b(c)(4) and Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of the meetings, substantive program information and rosters of members, upon request.

Name of Committee: National Cancer Advisory Board.
Date and Place of Meeting: October 3–5, 1979; Building 31C, Conference Room 6.
Times Open: October 3, 1:00 p.m.–adjournment; October 5, 9:00 a.m.–adjournment.
Agenda/Open Portion: Reports on activities of the President's Cancer Panel; the National Cancer Institute; the Legislative Process; advancement in treatment of pediatric cancer; the roles of related agencies in cancer activities; and, reports of the Board's Subcommittees.
Times Closed: October 4, 9:00 a.m.–adjournment.
Closure Reason: To review research grant applications.

Name of Committee: Subcommittee on Centers.
Date and Place of Meeting: October 2, 1979, 1:00 p.m.–6:00 p.m.; Building 31C, Conference Room 6.
Open for the Entire Meeting.

Name of Committee: Subcommittee on Organ Sites.
Date and Place of Meeting: October 2, 1979, 7:30 p.m.–adjournment; Building 31C, Conference Room 7.
Closed for the Entire Meeting.
Agenda: To review research grant applications.

Name of Committee: Subcommittee on Special Action for Grants.
Date and Place of Meeting: October 3, 1979, 8:30 a.m.–12:00 noon; Building 31C, Conference Room 6.
Closed for the Entire Meeting.
Agenda: To review research grant applications.

Name of Committee: Subcommittee on Centers.
Date and Place of Meeting: October 3, 1979, 7:30 p.m.–adjournment; Building 31C, Conference Room 9.
Closed for the Entire Meeting.
Agenda: To review research grant applications.

Name of Committee: Subcommittee on Environmental Carcinogenesis.
Date and Place of Meeting: October 3, 1979, 7:30 p.m.–adjournment; Building 31A, Room 7A24.
Open for the Entire Meeting.

(Catalog of Federal Domestic Assistance Programs Nos. 13.392–13.399 National Institutes of Health)

Dated: September 7, 1979.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 79–28719 Filed 9–14–79; 8:45 am]

BILLING CODE 4110–08–M

## National Advisory General Medical Sciences Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, October 24–25, 1979, Building 1, Wilson Hall, Bethesda, Maryland.

This meeting will be open to the public on October 24, 1979, from 9 a.m. to 3 p.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6), the meeting will be closed to the public on October 24, 1979, from 3 p.m. to 5 p.m. and on October 25, 1979, from 9 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Paul Deming, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Room 9A12, Westwood Building, Bethesda, Maryland 20205, Telephone: 301, 496–7301 will provide a summary of the meeting and a roster of council members.

Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496–5231 will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13-859, 13-860, 13-861, 13-862, 13-863, National Institutes of Health)

Dated: September 7, 1979.

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 79-28721 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-08-M

## Communicative Disorders Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Communicative Disorders Review Committee, National Institute of Health, October 25-27, 1979, Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Bethesda, Maryland 20014.

The meeting will be open to the public from 9:00 a.m. until 5:00 p.m. on October 25th and from 9:00 a.m. until 10:00 a.m. on October 26th to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Section 552b(c)(4), and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 26th from 10:00 a.m. to adjournment on October 27th, for the review, discussion, and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Sylvia Shaffer, Chief, Office of Scientific and Health Reports, Building 31, Room 8A02, NIH, NINCDS, Bethesda, MD 20205, telephone 301/496-5751, will furnish summaries of the meeting and rosters of committee members.

Dr. Ernest J. Moore, Executive Secretary, NINCDS, NIH, Federal Building, Room 9C14, Bethesda, MD 20205, telephone 301/496-9223, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.852, National Institutes of Health.)

*Dated: September 7, 1979.*

Suzanne L. Fremeau,

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 79-28722 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-08-M

## Office of the Assistant Secretary for Health

## Health Maintenance Organizations

**AGENCY:** Public Health Service, HEW.

**ACTION:** Notice. April list of qualified health maintenance organizations.

**SUMMARY:** This notice sets forth the names, addresses, service areas, and date of qualification of entities determined by the Secretary to be qualified health maintenance organizations (HMOs). In addition, changes or revisions are reported of previously qualified HMOs as follows: name change, address change, and service area correction.

**FOR FURTHER INFORMATION CONTACT:** Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

**SUPPLEMENTARY INFORMATION:** Regulations issued under Title XIII of the Public Health Service Act, as amended (42 CFR 110.605(b)), require that a list and description of all newly qualified HMOs be published on a monthly basis in the Federal Register. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

Qualified Health Maintenance Organizations

*Name, Address, Service Area, and Date of Qualification*

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Community Health Care Center Plan, Inc. (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 150 Sargent Drive, New Haven, Connecticut 06511. Service area: Greater New Haven area and including the following cities and towns in Connecticut: Ansonia, Beacon Falls, Bethany, Branford, Cheshire, Derby, East Haven, Guilford, Hamden, Madison, Milford, New Haven, North Branford, North Haven, Orange, Seymour, Shelton, Wallingford, West Haven, and Woodbridge. Date of qualification: March 1, 1978. (Transitionally qualified: October 31, 1975.)

2. HealthCare of Louisville, Inc. (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 1330 Third Street, Louisville, Kentucky 40208. Service area: Jefferson County, Kentucky, and any portion of adjacent counties located in Kentucky or Indiana which lie within a radius of 25 air miles of the Family Health Center, 1809 Standard Avenue, Louisville, Kentucky. Date of qualification: April 5, 1979. (Transitionally qualified: April 2, 1976.)

3. The Health Care Plan, Inc. (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 664 Ellicott Square Building, Buffalo, New York 14203. Service area: Erie County, New York. Date of qualification: September 1, 1978. (Achieved Preoperational qualification on August 31, 1978.)

4. MAXICARE (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 4455 West 117th Street, Suite 502, Hawthorne, California 90250. Service area: South Bay and the Southwest portion of the Los Angeles metropolitan area included in the following zip codes:

| | | | | | |
|---|---|---|---|---|---|
| 90001-03 | 90005-08 | 90011 | 90013-19 | 90024-26 | 90034-35 |
| 90037 | 90043-45 | 90047 | 90049 | 90056-59 | 90061-62 |
| 90064 | 90066-67 | 90071 | 90201 | 90210-12 | 90220-22 |
| 90230 | 90240-42 | 90245 | 90247-50 | 90254-55 | 90260 |
| 90262 | 90266 | 90270 | 90272 | 90274 | 90277-78 |
| 90280 | 90290-91 | 90301-05 | 90401-05 | 90501-06 | 90601-06 |
| 90620-21 | 90623 | 90630-31 | 90638 | 90640 | 90650 |
| 90660 | 90670 | 90680 | 90701 | 90706 | 90710 |
| 90712-13 | 90715-17 | 90720 | 90723 | 90731-32 | 90740 |
| 90742-47 | 90802-08 | 90810 | 90813-15 | 90840 | 91020 |
| 91040 | 91042 | 91201-06 | 91214 | 91301-04 | 91306-07 |
| 91311 | 91316 | 91324-26 | 91331 | 91335 | 91340 |
| 91342-45 | 91352 | 91356 | 91364 | 91367 | 91401-03 |
| 91405-06 | 91411 | 91423 | 91436 | 91501-02 | 91504-06 |
| 91601-02 | 91604-08 | 91706 | 91722-24 | 91731-33 | 91744-46 |
| 91748 | 91765-68 | 91770 | 91780 | 91789-92 | 92621 |
| 92626-27 | 92631-33 | 92635 | 92640-41 | 92643-49 | 92665-70 |
| 92680 | 92683 | 92686 | 92701 | 92703-08 | 92710 |
| 92801-02 | 92805-06 | 93063 | 93065 | | |

Date of qualification: April 4, 1979. (Transitionally qualified: March 25, 1976).

5. Piedmont Health Care Corporation, Inc., (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), P.O. Box 6967, Greenville, South Carolina 29606. Service area: Greenville, South Carolina, and any portion of adjacent counties, located in South Carolina, which lie within a radius of 30 miles of the Carolina Medical Center, 2320 East North Street, Greenville, South Carolina. Date of qualification: March 2, 1979 (Transitionally qualified: December 29, 1975).

6. Rhode Island Group Health Association, (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 530 North Main, Providence, Rhode Island 02904. Service area: Rhode Island and the following communities in Massachusetts:

*Bristol County*

Attleboro, Berkeley, Dighton, Mansfield, North Attleboro, Norton, Rehoboth, Seekonk, Swansea and Taunton.

*Norfolk County*

Bellingham, Franklin, Plainville, and Wrentham.

*Worcester County*

Blackstone and Millville.

Date of qualification: September 30, 1978. (Transitionally qualified: October 30, 1975).

7. Rocky Mountain Health Maintenance Organization, (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 2231 North Seventh Street, Grand Junction, Colorado 81501. Service area: Mesa County, Colorado. Date of qualification: March 2, 1979. (Transitionally qualified: December 29, 1975).

(Transitional Qualified Health Maintenance Organization: 42 CFR 110.603(b))

1. The Philadelphia Health Plan, (Medical Group Model, see Section 1310(b)(1) of the Public Health Service Act), 1015 Chesnut Street, Philadelphia, Pennsylvania 19107. Service area: Philadelphia County and portions of Delaware, Montgomery, and Bucks Counties, Pennsylvania. The eastern border of the Service Area is the Delaware River. The southern-most point is where State Route 420 meets the river in Delaware County. The Service Area boundary proceeds northwest along State Route 420, and then northeast along State Route 320 into Montgomery County to the Schuylkill River. The boundary follows the Schuylkill River southeast to the northwestern city limits of Philadelphia and then follows the city limits to include the entire northwest part of the city. The boundary turns north along U.S. 611 to Willow Grove and continues on State Route 263 to Hatboro. The boundary turns northeast and then east as it follows State Route 332 from Hatboro to Newton. At Newton, the boundary preceeds in a southeast direction along State Route 413 back to the Delaware River. Date of qualification: April 13, 1979.

(Preoperational Qualified Health Maintenance Organization: 42 CFR 110.603(c))

1. Idaho Health Maintenance Organization, Inc. (Individual Practice Association, see Section 1310(b)(2)(A) of the Public Health Service Act), 963 South Orchard, Suite B, Boise, Idaho 83705. Service area: Ada and Canyon Counties, Idaho. Date of qualification: April 3, 1979.

*Name Change:*

*Change from:* 1. Health Central of Lincoln, Nebraska (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), and 17th and N Street, Lincoln, Nebraska 68508.

*Change to:* Health Central, (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 17th and N Street, Lincoln, Nebraska 68508.

Date of operational qualification: February 1, 1979. Preoperationally qualified—January 29, 1979. (44 FR 25267).

*Change from:* 2. MetroCare of Arlington, Texas (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1201 North Watson Road, Arlington, Texas 76011.

*Change to:* Metrocare, (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1201 North Watson Road, Arlington, Texas 76011.

Date of Operational Qualification: February 14, 1979. Preoperationally qualified: January 30, 1979. (44 FR 25267)

Address Change:

Change from: CompreCare, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1731 West Barbara Avenue, Los Angeles, California 90062.

*Change to:* CompreCare, Inc., Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 3850 Wilshire Boulevard, Los Angeles, California 90010.

Operationally qualified—February 10, 1978 (43 FR 15013)

Service Area Correction

Family Health Program, Inc., 2925 North Palo Verde Avenue, Long Beach, California 90815. Change from: Zip code 02704 in Los Angeles County, California.

(Published in error on April 30, 1979, 44 FR 25269) Change to: Zip code 92704 in Los Angeles County, California.

Service Area Correction and Revision

Intergroup Prepaid Health Services, Inc., (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), CNA Plaza, Chicago, Illinois 60685.

*Change from:* Counties Within Illinois

| | |
|---|---|
| Champaign | Lake |
| Cook | McHenry |
| Du Page | Peoria |
| Grundy | Tazewell |
| Kane | Will |
| Kendall | Woodford |

Counties Within Indiana

| | |
|---|---|
| Adams | Madison |
| Allen | Miami |
| Blackford | Noble |
| De Kalb | Porter |
| Delaware | Randolph |
| Huntington | Wabash |
| Jay | Wells |
| Lake | Whitley |

*Change to:* Counties Within Illinois

| | |
|---|---|
| Champaign | Lake |
| Cook | McHenry |
| Du Page | Peoria |
| Grundy | Tazewell |
| Kane | Will |
| Kendall | Woodford |

Counties Within Indiana

| | |
|---|---|
| Adams | Madison |
| Allen | Miami |
| Blackford | Noble |
| De Kalb | Porter |
| Delaware | Randolph |
| *Grant | Wabash |
| Huntington | Wells |
| Jay | Whitley |
| Lake | |

Change in service area effective February 5, 1979 (* including a correction to the revised service area which contained an error when published on April 30, 1979, 44 FR 15167).

Date of Transitional Qualification: April 18, 1977.

3. Matthew Thornton Health Plan, Inc., (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 591 West Hollis Street, Nashua, New Hampshire 03060. Change in service area effective January 22, 1979. (Previously published on April 24, 1979, 44 FR 24241 without effective date indicated). The service area is the following communities in New Hampshire:

| | |
|---|---|
| Amherst | Mason |
| Bookline | Merrimack |
| Dunstable | Milford |
| Groton | Mount Vernon |
| Hollos | Nashua |
| Hudson | Pelham |
| Litchfield | Wilton |
| Londonderry | Windham |
| Lyndeboro | |

Operationally qualified: August 15, 1978.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMOs should be sent to the same office.

Dated: September 5, 1979.

Howard R. Veit,

*Director, Office of Health Maintenance Organizations.*

[FR Doc. 79-28714 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-85-M

## Health Maintenance Organizations

**AGENCY:** Public Health Service, HEW

**ACTION:** Notice, May list of qualified health maintenance organizations.

**SUMMARY:** This notice sets forth the names, addresses, service areas, and date of qualifications of entities determined by the Secretary to be qualified health maintenance organizations (HMO's). Following the list is a service area revision of a previously qualified HMO.

**FOR FURTHER INFORMATION CONTACT:** Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville Maryland 20857, 301/443-4106.

**SUPPLEMENTARY INFORMATION:** Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMO's be published on monthly basis in the Federal Register. The following entities have been determined to be qualified HMO's under

Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)):

Qualified Health Maintenance Organizations

*Name, Address, Service Area, and Date of Qualification*

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Bay Pacific Health Plan, Inc. (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 3080 La Selva, San Mateo, California 94403. Service area: Zip codes included are as follows:

*San Mateo County, Calif.*

| | | | | | |
|---|---|---|---|---|---|
| 94002 | 94005 | 94010 | 94014–20 | 94025 | 94030 |
| 94037–38 | 94044 | 94061–66 | 94070 | 94080 | 94128 |
| 94401–04 | | | | | |

Date of qualification: March 29, 1979. (Achieved preoperational qualification March 28, 1979).

2. Idaho Health Maintenance Organization, Inc. (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 963 South Orchard, Suite B, Boise, Idaho 83705. Service area: Ada and Canyon Counties, Idaho. Date of qualification: May 1, 1979. (Achieved preoperational qualification on April 3, 1979).

3. Roosevelt Health Plan (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 1200 N. La Salle Street, Chicago, Illinois 60610. Service area: Zip codes included are as follows:

*Cook County, Ill.*

| | | | | | |
|---|---|---|---|---|---|
| 60601–07 | 60610–12 | 60614 | 60622 | 60624 | 60644 |
| 60647 | 60657 | | | | |

(Transitionally Qualified Health Maintenance Organization: 42 CFR 110.603(b)

1. Texas Prepaid Health Plan (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 6700 West Loop South, Suite No. 400, Bellaire, Texas 77401. Service area: Harris, Fort Bend, and Montgomery counties, Texas, including zip codes in the following counties:

*Liberty County, Tex.*

| | | | | | |
|---|---|---|---|---|---|
| 77327 | 77367–68 | 77374 | 77376 | 77533 | 77535 |
| 77538 | 77575 | 77587 | | | |

*Waller County, Texas*

| | | | | | |
|---|---|---|---|---|---|
| 77418 | 77423 | 77445 | 77447 | 77466 | 77484 |

Date of qualification: May 31, 1979.

Service Area Revision

A service area listed in the cumulative list of qualified HMO's and published on April 7, 1978 in the Federal Register (43 FR 14911) is revised as follows:

1. Group Health Association, Inc., 2121 Pennsylvania Avenue, NW., Washington, D.C. 20037. Service area:

*Change from:* The geographic area encompassing the District of Columbia and the counties of Howard, Montgomery, and Prince Georges in the State of Maryland, and the counties of Arlington, Loudoun, Prince William, and Fairfax, and all incorporated communities therein including, but not limited to, the cities of Alexandria, Falls Church, and Fairfax in the State of Virginia.

*Change to:* Washington, D.C.; certain zip codes within Charles County* (20601, 20612–13, 20616–17, 20640, 20646, 20675, 20695), and the entirety of Howard, Montgomery, and Prince Georges counties, Maryland; Arlington, Fairfax, Loudoun and Prince William counties, and the independent cities of Alexandria, Falls Church, and Fairfax, Virginia.

Date of Qualification: Transitionally qualified—July 18, 1977.

Files containing detailed information regarding qualified HMO's will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Park Building, 3rd Floor, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified HMO's should be sent to the same office.

Dated: September 5, 1979.

Howard R. Veit,

*Director, Office of Health Maintenance Organizations.*

*Added service area, including zip codes—effective May 1, 1979.

[FR Doc. 79-28715 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-85-M

## Health Maintenance Organizations

**AGENCY:** Public Health Service, HEW.

**ACTION:** Notice, June list of qualified health maintenance organizations.

**SUMMARY:** This notice sets forth the names, addresses, service areas, and date of qualification of entities determined by the Secretary to be qualified health maintenance organizations (HMO's).

**FOR FURTHER INFORMATION CONTACT:** Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

**SUPPLEMENTARY INFORMATION:** Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMO's be published on a monthly basis in the Federal Register. The following entities have been determined to be qualified HMO's under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)):

Qualified Health Maintenance Organizations

*Name, Address, Service Area, and Date of Qualification*

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Genessee Valley Group Health Association, (Medical Group Model, See Section 1310(b)(1) of the Public Health Service Act), 41 Chestnut Street, Rochester, New York 14647. Service area: City of Rochester and Monroe County, New York. Date of operational qualification: May 8, 1979. (Transitionally qualified: January 30, 1976).

2. Georgetown University Community Health Plan, Inc. (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), Suite 300, 4200 Wisconsin Avenue, NW., Washington, D.C. 20016. Service area: Washington, D.C., Arlington, Fairfax, Prince William and Loudoun counties and the municipalities of Falls Church, Fairfax, Alexandria, Manassas, and Manassas Park, Virginia; Montgomery and Prince Georges counties, Maryland. Date of operational qualification: May 25, 1979. (Transitionally qualified: May 26, 1976).

3. North Central Connecticut Health Maintenance Organization, Inc., (Staff Model, see Section 1310(b)(1) of the Public Health Service Act), 275 Broad Street, Windsor,

Connecticut 06095. Service area: Towns of Suffolk, Enfield, East Grandby, Windsor Locks, East Windsor, Bloomfield, Windsor, South Windsor, Vernon, Avon, West Hartford, Hartford, East Hartford, Manchester, Bolton, Farmington, Plainville, New Britain, Newington, Wethersfield, Glastonbury, Rocky Hill, and Marlborough. Date of qualification: June 27, 1979.

(Transitional Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Ross-Loos Health Plan of Southern California (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1711 West Temple Street, Los Angeles, California 90026. Service area: The following zip codes in California:

*Los Angeles County*

| | | | | | |
|---|---|---|---|---|---|
| 90001-100 | 90101 | 90201 | 90210-15 | 90220-24 | 90230 |
| 90240 | 90241-42 | 90245 | 90247-50 | 90254-55 | 90260 |
| 90261 | 90262 | 90266 | 90270 | 90272 | 90274 |
| 90277-78 | 90280 | 90290-91 | 90301-10 | 90401-06 | 90501 |
| 90502-10 | 90601-12 | 90638 | 90640 | 90650 | 90660 |
| 90670 | 90701 | 90706 | 90710 | 90712-17 | 90723 |
| 90731-33 | 90744-49 | 90801-48 | 91001 | 91006 | 91010 |
| 91011 | 91016 | 91020 | 91023-24 | 91030 | 91040 |
| 91042 | 91046 | 91101-31 | 91201-14 | 91302-07 | 91311 |
| 91316 | 91324-31 | 91335 | 91340-49 | 91352 | 91356 |
| 91364-71 | 91401-94 | 91501-23 | 91601-12 | 91701-02 | 91706 |
| 91710-11 | 91722-24 | 91730-34 | 91740 | 91744-50 | 91754 |
| 91761-70 | 91773 | 91775-78 | 91780 | 91786 | 91789 |
| 91790 | | | | | |

*Orange County*

| | | | | | |
|---|---|---|---|---|---|
| 90620-24 | 90630-31 | 90680 | 90720 | 90740 | 90742 |
| 90743 | 91791-93 | 91801-04 | 91807 | 92601 | 92621 |
| 92625-27 | 92630-38 | 92640-53 | 92655 | 92660-70 | 92676 |
| 92680 | 92683 | 92686 | 92701-28 | 92801-07 | |

Date of qualification: June 27, 1979.

2. TakeCare Corporation (Individual Practice Association Model, see Section 1310(b)(2)(A) of the Public Health Service Act), 1950 Franklin Street, Oakland, California 94659. Service area: The following zip codes in California:

*Marin County*

| | | | | | |
|---|---|---|---|---|---|
| 94901-73 | | | | | |

*San Mateo County*

| | | | | | |
|---|---|---|---|---|---|
| 94002 | 94005 | 94010 | 94014-21 | 94025 | 94030 |
| 94037 | 94038 | 94044 | 94060-66 | 94070 | 94074 |
| 94080 | 94401-49 | | | | |

*Santa Clara County*

| | | | | | |
|---|---|---|---|---|---|
| 94022 | 94035 | 94040-43 | 94086-88 | 90301-06 | 95002 |
| 95008 | 95014 | 95020 | 95030 | 95035 | 95037 |
| 95046 | 95050-54 | 95070 | 95086 | 95101-54 | |

*Sonoma County*

| | | | | | |
|---|---|---|---|---|---|
| 94922 | 94923 | 94928 | 94952 | 94972 | 95401-06 |
| 95419 | 95430 | 95431 | 95436 | 95439 | 95442 |
| 95452 | 95462 | 95465 | 95472 | 95476 | 95492 |

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Questions about the review process or requests for information about qualified HMO's should be sent to the same office.

Dated: September 5, 1979.

Howard R. Veit,

*Director, Office of Health Maintenance Organizations.*

[FR Doc. 79-28716 Filed 9-14-79; 8:45 am]

BILLING CODE 4110-85-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[C-12610]

### Colorado; Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

*Correction*

In Federal Register Doc. 79-27763 appearing on page 52041 in the issue for Thursday, September 6, 1979, in the land description, under "T. 7 N., R. 79 W." the first line should read: "Sec. 4, Lot 4, SW¼NW¼, and W½SW¼;".

BILLING CODE 1505-01-M

[NM 38144, 38146, 38147, 38148, 38158, 38161 and 38177]

### New Mexico; Applications

September 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for seven 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 28 N., R. 5 W.,
Sec. 11, SE¼SE¼;
Sec. 14, E½NE¼.
T. 25 N., R. 9 W.,
Sec. 27, lots 2, 3, 4, S½NE¼ and N½SE¼.
T. 29 N., R. 9 W.,
Sec. 1, NW¼SW¼;
Sec. 12, NE¼NE¼;
Sec. 22, lots 2, 7 and 8.
T. 30 N., R. 9 W.,
Sec. 13, NW¼SE¼;
Sec. 24, lots 6, 7 and NE¼SW¼.

These pipelines will convey natural gas across 2.442 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the Distric Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 79-28590 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-84-M

### Utah; White River Dam Project Environmental Impact Statement; Intent To Prepare an Environmental Impact Statement and Conduct Scoping Meetings

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) Department of the Interior, plans to prepare a draft environmental statement (EIS) on the State of Utah Division of Water Resources' proposed White River Dam project. The proposed project would involve: Development of a 129

foot high earth and rock fill dam on the White River in Uintah County, Utah to create a reservoir with 105,000 acre feet of total storage capacity, construction and operation of an 8 MW hydro-electric power plant, relocation of the Ignatio Bridge and connecting roads, construction of a 5.5 mile long 138 kv power transmission line, modification of Bonanza water supply source, and development of access roads with recreation facilities. (Additional information on the proposed project may be obtained from the State of Utah Division of Water Resources, 231 East 4th South, Salt Lake City, Utah 84111.) Rights-of-way across public lands administered by the BLM would be needed for the project.

In accordance with the Council on Environmental Quality's regulations, the BLM has planned to hold two scoping meetings to identify the significant issues and alternatives to be analyzed in the EIS. Meetings will be held on October 17, 1979 in the conference room of the BLM Vernal District Office, 170 South 5th East, Vernal, Utah and on October 18, 1979 in the 14th floor Conference Room of the BLM Utah State Office, 136 East South Temple, Salt Lake City, Utah. Both meetings will begin at 7:00 p.m.

At the scoping meetings, the project proposal will be briefly explained and the audience will be asked to suggest significant environmental concerns which should be investigated. The audience also will be asked to identify any appropriate alternatives which might be included in the EIS. The purpose of this scoping process will be to determine which concerns and alternatives will be analyzed in depth, and eliminate from detailed study the topics which are not significant or which have been covered by prior environmental review.

All interested agencies, organizations or persons desiring to assist in the EIS scoping process should attend at least one of the scheduled meetings. Those desiring to participate in the EIS scoping process but unable to attend one of the above meetings should contact Mr. Don Cain or Mr. Thom Slater for further information at the following address: Bureau of Land Management, Utah State Office, 136 East South Temple, Salt Lake City, Utah, Telephone: Area Code 801, Com. 524–4257, FTS 588–4257.

Dated: September 12, 1979.

Gary Wicks,

*State Director, Utah State Office.*

[FR Doc. 79-28811 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-84-M

## Bureau of Reclamation

### Contract Negotiations With the Central Nebraska Public Power and Irrigation District; Intent To Negotiate a Contract for Repayment of a Small Reclamation Projects Loan

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a repayment contract with the Central Nebraska Public Power and Irrigation District, Holdrege, Nebraska. The proposed contract will be negotiated pursuant to the Small Reclamation Projects Act of 1956 (70 Stat. 1044), as amended, and will provide for repayment of not to exceed $10,368,000, which will be used for major rehabilitation work on the District's Phelps water distribution system.

The system encompasses approximately 100,000 acres of irrigable land in and around Holdrege, Nebraska, of which 67,000 acres will benefit from the rehabilitation project. Major portions of the Phelps system have become antiquated and deteriorated. The proposed plan provides for rehabilitating and improving the district's existing distribution facilities to conserve existing water supplies, provide more efficient delivery of water to the district, reduce canal and lateral seepage losses, improve ground-water conditions, and provide more economical operation and maintenance of the district's facilities. The principal project features include rehabilitation of the main canal earthwork and structures, lateral earthwork and structures, a main canal regulating reservoir, and a monitoring and remote control system.

The public is invite to observe the negotiating sessions and to submit written comments on the proposed contract not later than 30 days after the completed contract draft is available. All written correspondence concerning the proposed contract is available to the public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

Advance notice of negotiating sessions shall be furnished only to those parties having previously furnished a written request for such notice to the office identified below at least 1 week prior to any session.

For further information, please contact Mr. Robin McKinley or Mr. William Wyche, Repayment Branch, Division of Water and Land Operations, Bureau of Reclamation, Lower Missouri Region, Building 20, Denver Federal Center, Denver, Colorado 80225, telephone (303) 234–3327 or (303) 234–6561.

Dated: September 7, 1979.

Clifford I. Barrett,

*Assistant Commissioner of Reclamation.*

[FR Doc. 79-28663 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-09-M

### Ventura County Water Management Project, California; Intent to Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental statement on the Ventura County Water Management Project, California. The proposed statement will address the impacts of alternative plans of total water management for Ventura County with an emphasis on the reclamation and reuse of municipal waste water. The purposes of the proposed project are to alleviate salt water intrusion and provide flood control, recreation, fish and wildlife use, and enhance outdoor recreation opportunities.

The proposed action will consist of several small reservoirs, pipelines, wetland development, pumping plants, stream enhancement, and recreation facilities.

Alternatives to the proposed action include various sizes and locations of reservoirs, wetlands, pipelines, pumping plants, stream enhancement and recreation facilities.

There will be a scoping session to solicit information from all interested public entities and persons to assist in determining the scope of issues to be addressed in the environmental statement and to identify the significant issues related to the proposed action. The time and place of this scoping session will be October 16, 7 p.m., at the Oxnard Multi-Service Center, 1500 Colonial Road, Oxnard, California.

The contact person for this environmental statement will be: Mr. Dee Harper, Office of Environmental Quality, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, Telephone: (916) 484–4794.

Dated: September 7, 1979.

Clifford I. Barrett,

*Acting Commissioner.*

[FR Doc. 79-28570 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-09-M

## Water Service Contract Negotiations With West River Conservancy Sub-District, Pick-Sloan Missouri Basin Program, South Dakota

The Department of the Interior, through the Bureau of Reclamation, intends to begin negotiations with the West River Conservancy Sub-District for a second water service contract allowing the Sub-District to contract with individual irrigators for potential development of over 3,600 additional acres for irrigation from Shadehill Reservoir in South Dakota.

Shadehill Dam and Reservoir were constructed on the Grand River of South Dakota between 1949 and 1951. Irrigation began in the early 1970's under temporary water service contracts between individual irrigators and the United States. In 1975, a 20-year water service contract was executed with West River Conservancy Sub-District. That contract gave the Sub-District a 3-year period in which to contract with individuals to develop up to 5,000 acres for irrigation and 3,064 acres were developed. The Sub-District has requested a second water service contract to allow the total developed acreage to be 6,700 acres, which would essentially utilize the water supply from Shadehill Reservoir originally planned for irrigation use.

The proposed contract would be negotiated pursuant to the Act of June 17, 1902 (32 Stat. 388), as amended and supplemented, and section 9(e) of the Act of August 4, 1939 (53 Stat. 1187).

The public may observe any contract negotiating sessions. Advance notice of such sessions, if any, will be furnished on request. Requests must be in writing and must identify the contract in which the requesting party is interested. Requests should be addressed to the Regional Director, Bureau of Reclamation, attention code 440, P.O. Box 2553, Billings, Montana 59103.

A proposed draft contract will be made available for public review, following completion of contract negotiations. Thereafter, a public hearing may be held, if necessary, and a 30-day period will be allowed for receipt of written comments from the public.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Ms. Elaine Ellingson, Repayment Technician, Division of Water and Land, at the address stated above or by telephone (406) 657-6455.

Dated: September 7, 1979.

Clifford I. Barrett,

*Assistant Commissioner of Reclamation.*

[FR Doc. 79-28531 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-09-M

## Fish and Wildlife Service

### Threatened Species Permit; Receipt of Application

The applicants listed below wish to apply for Captive Self-Sustaining Population permits authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those indicated species listed in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

These applications and supporting documents are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, USFWS, WPO, Washington, D.C. 20240. Interested persons may comment on these requests on or before October 17, 1979, by submitting written data, views, or arguments to the Director at the above address.

Applicant: Tulsa Zoological Park, 5701 E. 36th St. North, Tulsa, Oklahoma 74115—PRT 2-4614; Species: all T(C/P) wildlife.

Applicant: Crandon Park Zoological Garden, 4000 Crandon Blvd., Miami, Florida 33149—PRT 2-4618; Species: all T(C/P) mammals.

Applicant: Utica Zoo, Steele Hill Rd., Utica, New York 13501—PRT 2-4636; Species: all T(C/P) wildlife.

Please refer to the individual applicant and the appropriately assigned PRT 2-number when submitting comments.

Dated: September 5, 1979.

Donald G. Donahoo,

*Chief, Permit Branch, Federal Wildlife Permit Office.*

[FR Doc. 28676 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-55-M

### Endangered Specieis Permit; Notice of Receipt of Application

Applicant: William R. Curtis, Jr., 2020 Rachael Ave., National City, California 92050.

The applicant requests a permit to purchase eight masked Bobwhite Quail (*Colinus virginianus ridgwayi*) from Mr. Seymour Levy, Tuscon, Arizona, for propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4655. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: September 7, 1979.

Donald G. Donahoo,

*Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.*

[FR Doc. 79-28683 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-55-M

## Geological Survey

### General Mining Order No. 1; Reporting Recoverable Coal Reserves from Federal Leaseholds

**AGENCY:** Department of the Interior, Geological Survey.

**ACTION:** Final revision of General Mining Order No. 1.

**SUMMARY:** In carrying out lease management responsibilities under provisions of the mineral leasing acts including the Federal Coal Leasing Amendments Act of 1976, the Conservation Division must determine the coal resource base and calculate Recoverable Reserves. This information is required to enforce diligent development, continued operations, maximun economic recovery, and advance minimum production royalty under the law. Accordingly, this General Mining Order establishes a mandatory reporting format for reporting recoverable coal reserves from each Federal leasehold. This format provides criteria for calculating coal reserve base and Recoverable Reserves which assure that methods used by the lessees in forming estimates are uniform and that the data used and the results can be subjected to uniform audit by the Mining Supervisor.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew V. Bailey, Chief, Branch of Mining Operations, Conservation Division, MS 620, U.S. Geological Survey, Reston, Virginia 22092, (703) 860-7506, FTS 928-7506.

**SUPPLEMENTARY INFORMATION:** On July 10, 1978, the proposed Order appeared in the Federal Register (43 FR 29631). Interested persons were given 60 days within which to submit comments and suggested modifications or amendments.

Consideration has been given to all comments received insofar as they relate to matters within the scope of this Order. After reviewing the comments received, it has been determined that the proposed Order shall be issued by the Area Mining Supervisor with some changes. A discussion of major comments, grouped by subject, and changes follows:

(1) Confidentiality. Seven commenters were concerned that the Order did not contain a statement to the effect that company proprietary information would be protected from disclosure and expressly exempt the disclosure of this data to the public under 5 U.S.C. 552(b)(9). The Geological Survey (GS) has strict rules protecting company proprietary information in the Coal Mining Operating Regulations under 30 CFR 211.6 and has always held this information exempt from disclosure to the public by provisions of the Freedom of Information Act under sections 552(b)(4) and (9).

Special rules governing certain information concerning coal obtained under the mineral leasing acts in 43 CFR 2.20 (43 FR 15155, April 11, 1978) also safeguard proprietary information. Nevertheless, in response to the comments, a section on confidentiality has been incorporated in the final Order.

(2) Reporting date. Seven commenters said that the increased work to prepare the initial report for companies with a large number of leases would make compliance with the December 31, 1978, due date impossible. In response to these comments, the GS has extended the initial reporting date to March 1, 1980.

(3) Tribal name. Two commenters pointed out that 30 CFR part 211 regulations do not pertain to Indian lands. This error has been corrected by deleting reference to Indian and tribal lands.

(4) Need for data. Commenters questioned the need for the volume of data required by the Order. An accurate estimate of coal resources is necessary to determine Recoverable Reserves. This information is required to enforce diligent development, continued operations, maximum economic recovery, and advance minimum production royalty under the law.

Others objected to duplication of material previously submitted to the Mining Supervisor. Item E.1.e of the proposed Order exempts data already submitted to the Mining Supervisor. One comment suggested that data required to be submitted be limited to ongoing operations or to the extent the information is already available. This comment is rejected because it would not permit the Conservation Division to carry out lease management responsibilities under the law.

(5) Additional field work. Some commenters expressed concern that reporting requirements would force additional exploration drilling and field work. This Order does not require additional drilling or field work.

(6) Duplication of reporting requirements. Two commenters pointed out the inconsistency of reporting requirements with those of the Department of Energy (DOE) Financial Reporting System (43 FR 27135, June 22, 1978). The information contained in the report required by DOE is inadequate for carrying out lease management responsibilities under the law for each individual lease.

(7) Resource criteria. Several commenters objected to the coal resource criteria that included 28-inch beds of bituminous coal on the basis that it is uneconomic and has no commercial value in Western States. Furthermore, one stated that continuity is difficult to predict. Some suggested changing bed thickness to a minimum ranging from 48 inches to 60 inches for underground mining in the Western States and ranging from 24 inches to 40 inches for surface mining.

Section 3 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) reflects Congress intent that maximum economic recovery is of considerable importance and should be treated in a consistent and formal manner. This statute requires maximum economic recovery to be considered at two stages: (1) Lease issuance and (2) mine plan approval. Specifically, it requires that the Secretary shall evaluate and compare the effects of recovering coal by deep mining, surface mining, and any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal.

The bituminous and subbituminous coal and anthracite resource criteria have been changed to include beds 28 inches or more thick for all seams to a depth of 500 feet below the lowest surface elevation. For underground mines the criteria are changed to include beds of bituminous and subbituminous coal 48 inches or more thick, lignite 84 inches or more thick, and metallurgical and metallurgical blend coal 24 inches or more thick, to a depth of 3,000 feet.

However, thinner beds and/or deeper beds that presently are being mined by underground or surface methods or for which there is evidence that they could be mined commercially at this time must also be included.

One commenter stated that it is unclear as to what constitutes "evidence" and inquired in whose judgment commerciality would be determined. An example of "evidence" and "commerciality" is a proposed mining plan submitted to the Mining Supervisor by any lessee to recover thinner beds in the same area or under similar conditions supported by a discounted cash flow (DCF) analysis and feasibility study to show profitability.

Several commenters expressed a need for a maximum depth criterion. Proposed limits suggested by commenters on the maximum resource depth criterion ranged from 1,000 feet to 3,000 feet. The Order establishes the maximum depth of 3,000 feet unless mining actually is to occur at a lower depth.

(8) Statistical analysis. One commenter stated that the criteria for coal resource and the procedure for calculating the recovery factor would be of little value for comparison or statistical analysis when applied to different geologic conditions and different mining methods. The purpose, as stated in the summary of the Order, does not include use for statistical analysis.

(9) Weight factor. The comment was made that the coal-in-place weight factor is 5 to 10 percent high. The Order states that where more precise data are not available, the lessee is to assign certain weight factors for the coal. For any other weight factor used, show how it was derived. A typographical error in the proposed Order showing a weight value of 1,880 short tons per acre-foot was corrected to 1,800 short tons per acre-foot.

(10) Recoverable Reserves. Modifications to the definition of "Recoverable Reserves" were suggested by several commenters. In addition to the determination that the coal can be economically mined, one commenter suggested adding the words "and sold." This is rejected because selling is not an essential criterion for Recoverable Reserves. Another commenter recommended the following wording, "* * * that can be economically and safely mined under environmental and other regular physical limitations existing at the time of determination." The commenter explained, "The factor of safety would be considered in those instances where surface mining operations are conducted above a minable underground seam that lies below stripping depth. The deeper seam would be classified as a resource rather than a reserve because of the safety hazard of working under the surface

operation. In multiple seam underground mining areas, a mining operation in the top seam would normally preclude or unduly restrict development of lower seams until the mine area has stabilized and the lower seams can be safely entered. In this instance, only the top seam should be classified as reserve." If a seam cannot be recovered for safety reasons, it should be explained in the report under section D.2.b.(1) of the final Order. Examples of environmental regulations which might preclude mining are those pertaining to prime farmland, lands classified as "unsuitable" under OSM regulations, and alluvial valley floors. Physical limitations are zoning restrictions, surface or terrain conditions, and transportation availability. Each of these can be explained in the report under section D.2.b.(1) of the final Order.

One commenter pointed out the Order did not define any maximum thickness for deep-minable seams and suggested that a recovery factor be applied to a maximum thickness of 14 feet even though the seam may be thicker than that. This is also rejected. The mining thickness should be reported under section D.2.b. (1) and (2) and should be explained in the report under section D.2.b. (1) and (2) as to why only the 14-foot thickness can be recovered.

A new definition, C.2.b., Mineable Reserve Base, and a new reporting requirement, D.1.b., were added to more readily delineate that portion of the Coal Reserve Base considered commercially amenable to exploitation and to allow the Mining Supervisor to easily determine mining efficiency. For example, present underground mining practice has a height limit between the roof and floor that can be mined. This height or thickness would be used to calculate the Mineable Reserve Base in a coal bed that is thicker than the mining height limit.

(11) Recovery factor. One commenter suggests that lessees should not be required to calculate Recoverable Reserves but only submit data to the GS to make the calculations. The reasons given are (1) differences in interpretation of geological data among companies and even within a single company, and (2) a wide divergence of opinion in formulating economic judgments, particularly with changing economic conditions. This is rejected because 30 CFR 211.20 requires the lessee to submit Recoverable Reserve calculations. Another commenter suggests allowing each lessee to report coal reserves according to the individual's own guidelines, accompanied by a clear description of the guidelines used. For example, the Reserve Base would comprise coal that is economically minable under present conditions (proven) or can be reasonably expected to become minable in the future (potential). It would exclude calculation of in-place tonnages of deep seams that have no economic value and subsequent application of a recovery factor is zero. This suggestion is rejected because there must be uniformity in calculation of reserves for fair enforcement of diligent development, continued operations, maximum economic recovery, and advance minimum production royalty under the law. However, the Order has been changed to set a depth limit. Several comments were received recommending the definition of "recovery factor" taking into account mining methods and beneficiation with recognition of washery rejects. One commenter said the proposed regulations require that the recovery factor be applied to the total seam thickness. The seam thickness varies; so, the recovery factor must vary also. First of all, the Order is not a "proposed regulation." Under 30 CFR 211.20, the lessee is required to submit Recoverable Reserve calculations. This Order specifies how the calculations are to be made and when they are to be submitted. Secondly, the seam thickness can be reported as an average thickness. Just tell how the average was derived. One commenter was concerned that a detailed explanation of derivation of the recovery factor would require display of internal financial and economic criteria. Furthermore, it was contended that 30 CFR 211.20 did not give the GS explicit authority to require financial information. The requirement to report the recovery factor has been deleted.

(12) Confidence levels. One commenter suggested assuming an average confidence level for a particular area based upon the data point density within that area rather than calculate measured, indicated, and inferred reserves. Another commenter recommended that reserves in these differing categories should be weighted in some quantitative manner to arrive at an overall Recoverable Reserve value applicable to the lease. The suggestion was made that 90 percent average reliability be assumed for the measured category, 70 percent for indicated, and 50 percent for inferred Recoverable Reserves. Unless each category of Recoverable Reserves is treated with equal weight enforcement of diligent development, continued operations, and advance minimum production, royalty would tend to benefit the lessee who did very little drilling. Calculation of Recoverable Reserves by measured, indicated, and inferred categories for each individual bed on each separate lease will assist the Mining Supervisor's audit of the information to carry out lease management responsibilities under the law.

(13) Reports E.l.a in the proposed Order. One commenter suggested the following modification:

> For each individual bed, that in the judgment of the lessee or operator can be economically mined, on each separate lease, calculations of coal in place in thousands of tons using criteria given for coal resource. For coal beds considered currently uneconomic, an explanation of the reasons for this judgment.
>
> In practice, a statement of reasons would be made for an identified coal bed that in the judgment of the lessee is not currently recoverable. This is rejected because the law requires that a determination be made not only on some individual beds, but on all the seams on the lease.

(14) Reports E.l.c in the proposed Order. One commenter suggests that the term "legally recoverable" is ambiguous and should be explained or defined. The term "legally recoverable" has been removed from the final Order. Another commenter pointed out that the recovery factor that can be cited before mining is an estimated factor and should be distinguished from the real recovery factor that can be determined after mining. The requirement to report the recovery factor has been deleted.

(15) Reports E.l.c. in the proposed Order. Some commenters expressed concern that explanation of recovery factor calculations would reveal proprietary company information and mining techniques unique to the company. One suggested the following modification: Interpretive data and other resource information used in preparation of the report shall be held on file by the operator or lessee, and shall be made available to the Mining Supervisor upon review of the report and a request for data for clarification or validation of a specific portion or portions of the report. This is rejected because 30 CFR 211.20 requires the lessee to submit the requested information.

(16) Reports E.l.d. in the proposed Order. Some commenters objected to requests for interpretive information because it is a matter of opinion and should not be required. Furthermore, if interpretive data is ultimately required, it should be exempted from the certification requirement in Appendix A.17 in the proposed Order. Another commenter wanted to limit the interpretive information to lands

contained within existing mine permit areas. Regulation 30 CFR 211.20 requires the lessee to furnish "recoverable reserve calculations" which are derived from interpretation of raw data. To audit reserve calculations, the GS must have the support information. Certification assures that the data submitted is the information actually being used by the lessee and does not certify that the interpretation is a correct interpretation of the raw data. The Order applies to each lease for the purposes stated in the summary; so, the suggestion to limit the information to lands contained within exising mine permit areas is rejected. For the same reasons, a suggestion to submit interpretive data on an optional basis, if the lessee desires, is rejected.

(17) Reports E.1.e. in the proposed Order. One comment received suggested that a yearly summary of data collected be submitted rather than all logs and analyses. The recommendation is rejected because regulation 30 CFR 211.20 requires the lessee to submit this information.

Another comment suggested that the requirement for the results of other tests conducted on the land be applicable only to tests pertaining to coal and mining of the coal. The requirement was deleted. Some comments received indicate that the commenters overlooked a provision in Section E.1.e. in the proposed Order requiring information "not already submitted to the Mining Supervisor" and misunderstood the Order as requiring them to submit duplicate data.

(18) The Appendix has been deleted, and the information requested has been included in the body of the Order.

(19) Appendix A.4 in the proposed Order. One commenter pointed out that location of the lease boundary by latitude and longitude is unnecessary in the West where the land is surveyed by section, township, and range. Appendix A.4 and Appendix A.5 in the proposed Order are revised in the final Order in Section D.2.a.(4).

(20) Appendix A.6 in the proposed Order. This item was deleted because 30 CFR 211.20 does not apply to Indian lands as discussed under item 3 above.

(21) Appendix A.8 in the proposed Order. One commenter pointed out that some leases do not have active mines within or nearby. This item is not required in the final Order.

(22) Appendix A.10 in the proposed Order. One commenter stated that some leases do not have a mine operating. This item is not required in the final Order.

(23) Appendix A.11 and A.12 in the proposed Order. One commenter suggested that a certain system of stratigraphic terminology used in some GS publications does not mean that it is "official" or even accepted by the scientific community at large. Both requirements have been amended to include local names for coal beds and geologic formations.

(24) Appendix A.13 and A.14 in the proposed Order. One commenter states that numerous coal beds as thin as 28 inches are not sampled for analysis, recommending exclusion from expenditure on subeconomic resources. This section is amended to include only coal beds 28 inches thick or thicker to an average depth of 500 feet or a depth currently being mined by surface methods in the area. Another commenter suggested the following wording: "Give the average Btu/pound (as received) value for each coal bed sampled, the total number of samples used to calculate the average heat value, and the high and low range values observed for all samples taken from each coal bed." Similar wording was suggested for the average coal analysis. This is rejected and would only be required if the Mining Supervisor asked for it.

(25) Appendix A.17 in the proposed Order. Many commenters objected to certifying the correctness of the data submitted because the recovery factor and Recoverable Reserves are based somewhat on judgment and opinion. Furthermore, they said that data based on opinion and judgment should not be subject to penalties under 18 U.S.C., Section 1001. The object of the certification is to assure that the data submitted are the same as the data currently used by the lessee. The GS understands that the nature of the data is subject to interpretation, opinion, and judgment. For the purpose of auditing the calculation of Recoverable Reserves, it is necessary for the Mining Supervisor to have the lessee's interpretive data certified as correct in that it is the interpretive data currently used by the lessee for estimating Recoverable Reserves..

General Mining Order No. 1

*A. Applicability*

All Federal coal lessees shall comply with the requirements of this Order. It is an Order requesting reserve information based on available data. This is not an Order to conduct exploration.

*B. Authority*

This Order is issued under authority prescribed in 30 CFR 211.3(c)(12) and in accordance with 30 CFR 211.20.

Section 211.20 requires the lessee to submit to the Mining Supervisor, upon request, information "including Recoverable Reserve calculations along with vertical cross sections through the land and a map showing the location of coal outcrops, all drill holes, trenches, and other exploration activities. The records (submitted for all drill holes, trenches, and other exploration activities) shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions; copies of all other in-hole surveys, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced; and copies of (all) coal analyses and results of other tests conducted on the land."

*C. Criteria To Be Used*

For the purpose of this order, the criteria given below shall be used.

*1. Weight of Coal*

Where other more precise data are not available, the following values shall be assigned as the weight of coal:

| Type | Short tons per acre-foot |
|---|---|
| Lignite | 1,750 |
| Subbituminous | 1,770 |
| Bituminous | 1,800 |
| Anthracite | 2,000 |
| Semianthracite | 2,000 |

*2. Reserve Classification*

a. *Coal Reserve Base* means the tons of coal in place contained in beds of (1) metallugical or metallurgical blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation; (2) metallurgical and metallurgical blend coal 24 inches or more thick, anthracite, semianthracite, bitumunious and subbituninous coal 48 inches or more thick; and lignite 84 or more inches thick occurring from 500 to 3,000 feet; and (3) any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet which is presently being mined or for which there is evidence that it could be commercially mined at this time.

b. *Minable Reserve Base* means the tons of coal in place contained only in the area and thickness which is commercially minable with no deductions for coal to be left in pillars, fenders, property barriers, and other areas where mining is not permissible such as (1) coal under land determined

to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zoning restrictions.

c. *Recoverable Reserves* means the tons of coal that can be commercially mined. It does not include coal that will be left in pillars, fenders, property barriers, or other areas where mining is not permissible such as (1) coal under land determined to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zoning restrictions.

*3. Categories of Reserve Classifications*

The above classifications of reserves are subdivided into three categories as follows:

a. *Measured* means estimated tonnage based on sample analysis and measurements obtained from outcrops, trenches, mine workings, and drill holes. The points of observation and measurement are so closely spaced and the thinkness and extent of coals are so well defined that the tonnage is judged to be accurate within 20 percent of true tonnage. Although the spacing of the points of observation necessary to demonstrate continuity of the coal differs from region to region according to the character of the coal beds, the points of observation are no greater than ½ mile apart. Measured coal is projected to extend as a ¼-mile-wide belt from the outcrop or points of observation or measurement.

b. *Indicated* means estimated tonnage computed partly from measurements and partly from reasonable geologic projections. The points of observation are ½ mile to 1½ miles apart. Indicated coal is projected to extend as a ½ mile-wide belt that lies more than ¼ mile from the outcrop or points of observation or measurement.

c. *Inferred* means estimated tonnage based largely on broad knowledge of the geologic character of the bed or region and where few measurements of bed thickness are available. The estimates are based primarily on an assumed continuation from measured and indicated coal for which there is geologic evidence. The points of observation are 1½ to 6 miles apart. Inferred coal is projected to extend as a 2¼-mile-wide belt that lies more than ¾ mile from the outcrop or points of observation or measurement.

*D. Required Information*

1. *Reports.* On or before March 1, 1980, the lessee shall furnish to the Mining Supervisor reports based on all data which is available as of December 31, 1979.

A separate report shall be submitted for each individual lease showing:

a. Calculations of Coal Reserve Base (measured, indicated, and inferred) for each separate bed using criteria given regardless of whether or not the coal bed is commercially minable at the time of the report.

b. Calculations for Minable Reserve Base (measured, indicated, and inferred) for each separate bed using criteria given if, in the opinion of the lessee, a coal bed is commercially minable.

c. Calculations for Recoverable Reserves for each separate coal bed using criteria given.

d. Quality of coal in each individual bed by average BTU/pound value and average coal analysis [as received] percent by weight for ash, moisture, fixed carbon, and sulphur.

2. *Maps.* a. Each coal bed report shall contain a Coal Reserve Base map. To assure correlation and uniform audit of all reports by the Mining Supervisor, the Coal Reserve Base maps submitted by the lessees must be uniform. Therefore, the contents of the maps are limited to the following items and standards:

(1) Scale of 1:24,000 (1 inch=2,000 feet) must be used.

(2) A title block labeled "Coal Reserve Base Map" showing Federal lease identification number; acres contained in lease; county and State; name of lessee; local and official coal bed name; map scale indicated by scale bar; date, signature, and title of person attesting to accuracy of information contained in the map.

(3) A legend indicating the meaning of symbols, stippling, hatching, and crosshatching.

(4) Tabulation as follows:

| Reserve Base | Acres | Ave. Thick. | Tons |
|---|---|---|---|
| Measured | | | |
| Indicated | | | |
| Inferred | | | |

(5) Tabulation explaining map key numbers as follows:

Key No.; Drill Hole No.; Other.

(6) The lease boundary is to be plotted in a manner clearly showing location by legal subdivision, section, township, range, and meridian. If the lands are not included in the public land rectangular survey system (Texas and original 13 States), the metes and bounds shall be shown giving courses and distances between successive angle points on the lease boundary, and connected by courses and distances to a legal survey corner.

(7) Coal outcrop must be indicated by a solid line where the outcrop is exposed, and by a dotted line where the outcrop is inferred.

(8) Burned coal areas must be indicated by dot stippling.

(9) Mined-out areas must be indicated by darkened area, with notation giving mine name and whether surface or underground.

(10) Areas of measured Coal Reserve Base shall be indicated by parallel horizontal lines.

(11) Areas of indicated Coal Reserve Base shall be indicated by parallel vertical lines.

(12) Areas of inferred Coal Reserve Base shall be indicated by parallel lines slanted 45° to the right.

(13) Data points showing locations of drill holes and other exploration sites should be marked by a reference key number. When data points are sparse and can be legibly shown on the Coal Reserve Base map, they should be shown, if spacing of data points is too close to be legible, show only enough for representative data.

b. Each Coal Reserve map shall be accompanied by a narrative report.

(1) If, in the opinion of the lessee, a coal bed which is included in the Coal Reserve Base cannot be commercially mined, the narrative report shall include a detailed explanation of why all or part of the bed cannot be commercially mined or cannot be mined for safety reasons; the available data concerning average BTU/pound value and average coal analyses (as received) percent by weight for ash, moisture, fixed carbon, and sulphur; an explanation of the calculation method used to determine measured, indicated, and inferred Coal Reserve Base; and the resulting tonnages.

(2) If, in the opinion of the lessee, all or any portion of a coal bed which is included in the Coal Reserve Base can be commercially mined, the narrative report shall include tonnage calculations determining measured, indicated, and inferred Minable Reserve Base and Recoverable Reserves; maps and cross sections on a scale to legibly show data points (sites of analyses and measurements) on which the

calculations are based; the average BTU/pound value and average coal analysis (as received) percent by weight for ash, moisture, fixed carbon and sulphur; discussion of contemplated mining methods and explanation of why full thickness of the bed cannot be mined; and summary tabulations showing:

Minable Reserve Base

| Category | Acres | Ave. thick | Tons | Ave. BTU/ pound |
|---|---|---|---|---|
| Measured | | | | |
| Indicated | | | | |
| Inferred | | | | |

Recoverable Reserves

| Category | Acres | Ave. thick | Tons |
|---|---|---|---|
| Measured | | | |
| Indicated | | | |
| Inferred | | | |

In addition to the above individual Coal Reserve Base reports, the lessee shall submit a typical cross section showing all coal beds. Where topographic and geologic conditions vary greatly over the lease area and a single cross section is inadequate to accurately identify conditions, additional cross sections may be submitted. The location of the cross section(s) shall be marked on the Coal Reserve Base map which shows the uppermost coal bed. The cross section(s) which contains the coal beds listed shall show lease boundaries, coal thicknesses, overburden and interburden thicknesses, general lithology, and the local or official geologic formation names, as recognized by the Geological Survey.

3. *Annual reports.* After initial compliance with this Order, the lessee shall submit annual reports on or before March 1, showing changes in the previous year's report or a statement of "no change."

*E. Confidential Information.*

Confidential information in the report of Recoverable Coal Reserves from Federal leaseholds and identified as such by the lessee shall be considered in accordance with provisions of 43 CFR 2. Departmental policy regarding inspection of records is in keeping with the requirements of the Freedom of Information Act 5 U.S.C. 552. The Act exempts certain categories of records from disclosure. Under sections 552(b) (4) and (9), disclosure is not required of data that are geological and geophysical in nature and interpretations of such data, maps, trade secrets, and financial information. Related files for which the lessee requests proprietary status because of privileged or confidential information may be exempt from public disclosure provided that such status is determined by the Mining Supervisor to be warranted. Proprietary information to be kept confidential shall be clearly identified by the lessee by marking the top of each page of the document with the words of "CONFIDENTIAL INFORMATION."

Date: _____

Mining Supervisor: _____

Area: _____

Approved: _____

Dated: September 12, 1979.

John Duletsky,

*Acting Chief, Conservation Division.*

[FR Doc. 79-28760 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-31-M

## Office of Surface Mining Reclamation and Enforcement

## Determination of Completeness for Permanent Program Submission from the State of Texas

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM) U.S. Department of the Interior.

**ACTION:** Notice of Determination of Completeness of Submission.

**SUMMARY:** On July 20, 1979, the State of Texas submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice announces the Regional Director's determination as to whether the Texas program submission contains each required element specified in the permanent regulatory program regulations. The Regional Director has concluded a review and has determined the program submission is incomplete.

**ADDRESSES:** Written comments on the Texas program and a summary of the public meeting are available for public review, 8 a.m.–4 p.m., Monday through Friday, excluding holidays at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Bldg., 818 Grand Avenue, Kansas City, MO 64106.

Copies of the full text of the proposed Texas program are available for review during regular business hours at the OSM regional office above and at the following offices of the State regulatory authority:

Texas Railroad Commission, Surface Mining and Reclamation Division, 1124 S. Inter-Regional Hwy., Austin, Texas 78704.

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Woodgate Office Park, Suite 125, 1121 East S. W. Loop 323, Tyler, Texas 75703.

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Bldg., 1419 3rd Street, Floresville, Texas 78114.

**FOR FURTHER INFORMATION CONTACT:** Richard Rieke, Assistant Regional Director, Office of Surface Mining Reclamation and Enforcement, Scarritt Bldg., 818 Grand Avenue, Kansas City, MO 64106, Telephone: (816) 374–3920.

**SUPPLEMENTARY INFORMATION:** On July 20, 1979, OSM received a proposed permanent regulatory program from the State of Texas. Pursuant to the provisions of 30 CFR Part 732, "Procedures and Criteria for Approval or Disapproval of State Program Submissions" (44 FR 15326–15328, March 13, 1979), the Regional Director, Region IV, published notification of receipt of the program submission in the Federal Register of July 27, 1979, (44 FR 44281–44283) and in the following newspapers of general circulation within Texas:

Austin American Statesman
Houston Chronicle
Odessa American
Dallas Times Herald
San Antonio Light

The July 27, 1979, notice set forth information concerning public participation pursuant to 30 CFR 732.11. This information included a summary of the program submission, announcement of a public review meeting on September 5, 1979, in Austin, Texas to discuss the submission and its completeness, and announcement of a public comment period until September 5, 1979, for members of the public to submit written comments relating to the program and its completeness. Further information may be found in the permanent regulatory program regulations and Federal Register notice referenced above.

This notice is published pursuant to 30 CFR 732.11(b), and constitutes the Regional Director's decision on the

completeness of the Texas program. Having considered public comments, testimony presented at the public review meeting and all other relevant information, the Regional Director has determined that the Texas submission does not fulfill the content requirements for program submissions under 30 CFR 731.14 and is therefore incomplete.

In accordance with 30 CFR 732.11(c), the Regional Director has determined that the following required element is missing from the proposed Texas permanent regulatory program:

A. A section-by-section comparison of the Texas laws and regulations with the Federal Act and regulations as required by 30 CFR 731.14(c).

Texas may submit appropriate additions to remedy the incomplete element identified by the completeness review and any other modifications of the proposed Texas program until November 15, 1979. If the State fails to supply this missing element by that deadline, its program will be initially disapproved by the Secretary as set forth in 30 CFR 732.11(d). The Regional Director's determination that the proposed program is complete with respect to the remaining elements required by 30 CFR 731.14 does not mean that those elements are substantively adequate.

No later than November 20, 1979, the Regional Director will publish a notice in the Federal Register and in the following newspapers of general circulation in Texas initiating substantive review of the program submission:

Austin American Statesman
Houston Chronicle
Odessa American
Dallas Times Herald
San Antonio Light

The review will include a formal public hearing and written comment period. Procedures will be detailed in that notice. Further information concerning how that substantive review will be conducted may be found in 30 CFR 732.12.

The Office of Surface Mining is not preparing an environmental impact statement with respect to the Texas regulatory program, in accordance with Section 702(d) of SMCRA (30 U.S.C. 1292(d)) which states that approval of State programs shall not constitute a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act.

Dated: September 11, 1979.

Raymond L. Lowrie,
*Regional Director.*

[FR Doc. 79-28603 Filed 9-14-79; 8:45 am]
BILLING CODE 4310-05-M

## Pending Decision Relative to a Major Modification of Surface Coal Mining and Reclamation—Glenrock Coal Co.—Dave Johnston Mine, Converse County, Wyo.

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice of Pending Decision Relative to Proposed Major Modification to Surface Coal Mining and Reclamation Plan.

**SUMMARY:** Pursuant to § 211.5 of Title 30 and § 1506.6 of Title 40 Code of Federal Regulations, notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) has completed a technical and environmental review of the proposed modification to a previously-approved mining and reclamation plan. The proposed modification is described below. The area directly affected by the proposed approval lies within Sections 21 and 22 of T36N, R75W.

| Applicant | Mine name | Location of lands to be affected by modification | | |
|---|---|---|---|---|
| | | State | County | Township, range, and sections |
| Glenrock Coal Company (Northern Energy Resources Company). | Dave Johnston | Wyoming | Converse | T. 35 N., R. 75 W.: 2, 3, 10, 11, 12, 13, 14, 19, 23, 24, 25, 26.<br>T. 36 N., R. 74 W.: 6, 7.<br>T. 36 N., R. 75 W.: 1, 2, 3, 9, 10, 11, 12, 15, 16, 21, 22, 28, 33, 34.<br>T. 37 N., R. 75 W.: 25, 26, 35, 36. |

*Office of Surface Mining Reference No. WY-0022.* The mine is located approximately 15 miles north-northeast of Glenrock and about 25 miles northeast of Casper, Wyoming. The proposed modification involves mining and associated disturbance on an additional 350 acres immediately adjacent to the previously-approved mining and reclamation plan area. Less than one third of this area is proposed to be disturbed. This additional area is also part of a larger modification of the plan currently undergoing review by the regulatory authorities. The coal is shipped, via railroad, to the nearby Dave Johnston power plant. The reported annual production rate has been 3.2 million tons per year. Mining is proposed to continue as a single dragline operation. The proposed modification involves a change in the mining sequence to permit mining of an area of lesser overburden thickness. The area scheduled for mining is located north of and outside the mining boundaries previously approved by the Department. The extension is required to maintain coal production at the level necessary for fulfilling increasing coal demands from the Dave Johnston Steam Electric Generating Station.

Notice of availability of the plan for public review was published in the Federal Register on April 19, 1979 (44 FR 23385). The OSM has prepared a technical and environmental analysis of the proposal. The purpose of this notice is to inform the public that the Office of Surface Mining has completed its review including analysis of the reviews of the Wyoming Department of Environmental Quality, Land Quality Division, and other Departmental Agencies. Any persons having an interest which is or may be adversely affected by the proposed modification may, in writing, request a public meeting to discuss their views regarding the plan.

**DATES:** All requests for a public meeting must be made on or before October 7, 1979. No decision on the plan will be made by the Assistant Secretary, Energy and Minerals, prior to the expiration of the 20-day period.

The mining and reclamation plan and associated materials are available for review in the Region V Office of Surface Mining (Room 207, Post Office Building). Requests for a public meeting must be

submitted in writing to the Regional Director, Region V, Office of Surface Mining, Room 270, Post Office Building, 1823 Stout Street, Denver, CO 80202. Request must include the name and address of the requester.

**FOR FURTHER INFORMATION CONTACT:** John Hardaway or Tom Schultz, Office of Surface Mining, Region V, 1823 Stout Street, Denver, CO 80202.

(Federal Coal Lease Nos. W-038597, W-038602, W-041355, C-054769, W-024167, and W-0312918)

Paul L. Reeves,

*Acting Director.*

[FR Doc. 79-28729 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Consent Judgment in United States v. Black Millwork Co., Inc., et al., and Competitive Impact Statement Therein

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Eastern District of New York in *United States* v. *Black Millwork Co., Inc., et al.*, Civil No. 78 Civ. 683.

The Complaint alleges that beginning at least as early as 1966 the defendants and unnamed co-conspirators conspired to raise, fix, and stabilize the wholesale prices at which Andersen brand products and accessories and wood grilles were sold in the Metropolitan New York Area.

The proposed judgment would enjoin each of the defendants for a period of 10 years from entering into any agreement with any other wholesale distributor to raise, fix, stabilize, or maintain the prices or discounts at which Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles are offered for sale, acting either unilaterally or in concert with any other person to induce, coerce, or attempt to influence any other wholesale distributor to adhere to any suggested list price or discount off list price in the sale of Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles, or communicate to any wholesale distributor information concerning changes in the price or discount or the dates for any changes in the price or discount for Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles.

Additionally, each defendant is prohibited from reviewing with any other wholesale distributor a proposed Andersen Suggested List Price Catalog or discount; joining any other wholesale distributor in sending a Suggested List Price Catalog or discount sheet to any person for printing; or directing any person to print or publish an Andersen Suggested List Price Catalog or discount sheet by referring such person to another wholesale distributor's Andersen Suggested List Price Catalog or discount sheet.

Each defendant may, however, communicate the information necessary to the *bona fide* purchase or sale of Andersen brand products and accessories, Webb wood grilles or Coffman wood grilles between wholesale distributors. Also, the consent decree does not apply to communications between a defendant and its subsidiaries, affiliates, or its parent.

Public comment is invited within the statutory 60 day comment period. Such comment and response thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Ralph T. Giordano, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10007.

Dated: August 31, 1979.

Charles F. B. McAleer,

*Special Assistant for Judgment Negotiations.*

U.S. District Court, Eastern District of New York

*United States of America*, Plaintiff, v. *Black Millwork Co., Inc.; Hussey-Williams Co., Inc.; Sturtevant Millwork Corp.; and Whittier-Ruhle Millwork Co.*, Defendants. 78 Civ. 683.

Filed: August 31, 1979.

Stipulation

It is stipulated by and between the undersigned parties by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to Plaintiff and Defendants in this or any other proceeding.

Dated: August 31, 1979.

For Plaintiff:

John H. Shenefield,

*Assistant Attorney General.*

Joseph H. Widmar, Charles McAleer, Ralph T. Giordana, Robert A. McNew, Charles V. Reilly, Edwin Weiss, Stuart Grabois,

*Attorneys, Department of Justice, Antitrust Division.*

For Defendant Black Millwork Co. and Sturtevant Millwork Corp.

Richard W. Brady, Robert Edmonds,

*Miller Montgomery Sogi Brady & Taft.*

For Defendant Hussey-Williams Co., Inc.,

Seymour Lewis,

*Rosenman Colin Freund Lewis & Cohen.*

For Defendant Whittier-Ruhle Millwork Co.

Joel Miller,

*Ullman Miller & Wrubel, P.C.*

U.S. District Court, Eastern District of New York

*United States of America*, Plaintiff, v. *Black Millwork Co., Inc.; Hussey-Williams Co., Inc.; Sturtevant Millwork Corp.; and Whittier-Ruhle Millwork Co.*, Defendants. 78 Civ. 683.

Filed: August 31, 1979.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on April 10, 1978, and the plaintiff and the defendants Black Millwork Co. Inc., Hussey-Williams Co., Inc., Sturtevant Millwork Corp., and Whittier-Ruhle Millwork Co., by their respective attorneys having each consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law in connection herewith, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter herein and over the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

A. "Wholesale distributor" means any person which purchases Andersen brand products and accessories from Andersen Corporation and/or Coffman and/or Webb wood grilles from Coffman Window Grilles, a division of Vinador Co. or Webb Manufacturing, Inc., respectively, whether or not sold with Andersen brand products, and is engaged in the sale of such products and accessories and wood grilles to architects, housing contractors, lumberyards or retail home centers.

B. "Person" shall mean any individual, association, cooperative, partnership, corporation or other business or legal entity.

C. Andersen brand products and accessories means windows, gliding doors and shutters and miscellaneous parts and accessories manufactured and sold by the Andersen Corporation.

D. Coffman wood grilles means wooden light dividers designed or sold to be placed on Andersen brand products and manufactured by Coffman Window Grilles, a division of Vinador Co.

E. Webb wood grilles means wooden light dividers designed or sold to be placed on Andersen brand products and manufactured by Webb Manufacturing, Inc.

III

The provisions of this Final Judgment are applicable to the defendants herein and shall also apply to each of said defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and in addition, to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, provided, however, that nothing contained herein shall apply to any transaction or communication solely between or among a defendant and its subsidiaries, affiliated companies, or parent company.

IV

A. Each of the defendants is enjoined and restrained from adhering to, maintaining, furthering, enforcing or entering into directly or indirectly any agreement, understanding, plan or program with any other wholesale distributor to raise, fix, stabilize or maintain the prices or discounts at which Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles are offered for sale.

B. Each of the defendants is enjoined and restrained from acting, either unilaterally or in concert with any other person, directly or indirectly to induce, coerce or attempt to influence any other wholesale distributor to adhere to any suggested list price or discount off list price in the sale of Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles.

C. Each defendant is enjoined and restrained from communicating directly or indirectly to any wholesale distributor information concerning:

(1) The actual or proposed changes in price or discount for Andersen grand products and accessories, Coffman wood grilles or Webb wood grilles; and

(2) The actual or proposed dates for any changes in the price or discount for Andersen brand products and accessories, Coffman wood grilles or Webb wood grilles.

Provided, however, that nothing contained in this paragraph shall restrict the communication of information necessary to the *bona fide* purchase or sale of Andersen brand products and accessories and Webb wood grilles or Coffman wood grilles between and among wholesale distributors.

D. Each defendant is enjoined and restrained from:

(1) Reviewing, comparing or discussing with any other wholesale distributor a proposed Andersen Suggested List Price Catalog or discount sheet;

(2) Joining or participating with any other wholesale distributor in sending or submitting a Suggested List Price Catalog or discount sheet to any person for printing; and

(3) Instructing or directing any person to print or publish an Andersen Suggested List Price Catalog or discount sheet by referring such person, in whole or in part, to another wholesale distributor's Andersen Suggested List Price Catalog or discount sheet.

V

Each defendant is ordered and directed:

A. To establish a program for dissemination of information as to, and compliance with this Final Judgment involving each corporate officer, director, employee and agent having responsibilities in connection with or authority over the establishment of the wholesale prices at which Andersen brand products and accessories and wood grilles are sold, advising them of its and their obligations under this Final Judgment. This program shall include, but is not necessarily limited to, the inclusion, in an appropriate company manual or internal memorandum, of this Final Judgment in whole or in part or an explanation thereof, and a statement of corporate compliance policy thereunder; and

B. To furnish to plaintiff within one hundred and twenty (120) days of the entry of this Final Judgment, and thereafter upon request by plaintiff, on or about the anniversary date of this Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps the defendant has taken during the preceding year to discharge its obligations under subparagraph (A) of this Section V and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VI

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant, which may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, directors, employees and agents of such defendant, each of whom may have counsel present, regarding any such matters.

B. Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, with respect to any of the matters contained in the Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by any defendant to plaintiff, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

This Final Judgment will expire on the tenth anniversary of the date of its entry and with respect to any particular provision on any earlier date specified.

IX

Entry of this Final Judgment is in the public interest.

Dated:

_____,

*United States District Judge.*

**U.S. District Court Eastern District of New York**

*United States of America*, Plaintiff, v. *Black Millwork Co., Inc.; Hussey-Williams Millwork Co., Inc.; Sturtevant Millwork Corp.; and Whittier-Ruhle Millwork Co.*, Defendants. Civil Action No. 78 Civ. 883 (JM).

Filed: August 31, 1979.

The Government, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

**Nature of the Proceedings**

On April 10, 1978 the Government filed a civil antitrust action under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the above-named defendants and unnamed co-conspirators had combined and conspired in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) from at least as early as 1966 to raise, fix, and stabilize the wholesale prices and discounts at which Andersen brand products and accessories and wood grilles

manufactured by Webb Manufacturing, Inc., and Coffman Window Grilles, a division of Vinador Company, were sold in the Metropolitan New York Area.

Entry by the Court of the proposed Final Judgment will terminate this action. However, the Court will retain jurisdiction over the matter for ten years for possible further proceedings which may be needed to interpret, modify, or enforce the judgment or to punish violations of any of the provisions thereof.

II

**Description of the Practices Involved in the Alleged Violations**

The defendants are wholesale distributors of Andersen brand products and accessories and wood grilles manufactured by Well Manufacturing, Inc., and Coffman Window Grilles. Their combined sales of such products in the Metropolitan New York Area in 1976 were over $15 million.

In forming and effectuating the combination and conspiracy alleged in the Complaint, the defendants and co-conspirators communicated to one another at meetings, in telephone conversations and on other occasions, agreement upon the prices to be suggested in their Suggested List Price catalogs for Andersen brand products and accessories and wood grilles; used these revised catalogs in determining the prices at which Andersen brand products and accessories and wood grilles were sold to their retail customers; and agreed to the discount they would apply to the suggested list price for the sale of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area. The evidence produced at trial would show that as a result of the conspiracy, the wholesale prices of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area have been fixed, raised, and maintained at artificial and noncompetitive levels; purchasers of Andersen brand products and accessories and wood grilles in the Metropolitan New York Area have been deprived of free and open competition; and competition in the sale of Andersen brand products and accessories and wood grilles has been restrained.

III

**Explanation of the Proposed Final Judgment**

The Government and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. This stipulation provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

*A. Prohibited Conduct*

The proposed Judgment prohibits each defendant from adhering to, maintaining, furthering, enforcing, or entering into, directly or indirectly, any agreement, understanding, plan, or program with any other wholesale distributor to raise, fix, stabilize, or maintain the prices at which Andersen brand products and accessories and wood grilles are offered for sale or from adopting or following any practice, plan, program, or device having a similar purpose or effect. Each defendant is enjoined from acting either unilaterally or in concert with any other person, directly or indirectly, to induce, coerce, or attempt to influence any other wholesale distributor to adhere to any suggested list price in the sale of Andersen brand products and accessories and wood grilles. Each defendant is also enjoined from communicating, directly or indirectly, to any wholesale distributor information concerning the actual or proposed changes in price for Andersen brand products and accessories and wood grilles and the actual or proposed dates for any changes in the price for Andersen brand products and accessories and wood grilles.

Additionally, each defendant is prohibited from reviewing with any other wholesale distributor a proposed Andersen Suggested List Price Catalog or discount sheet; participating with any other wholesale distributor in sending a Suggested List Price Catalog or discount sheet to any person for printing; or instructing any person to publish an Andersen Suggested List Price Catalog or discount sheet by referring such person to another wholesale distributor's Andersen Suggested List Price Catalog or discount sheet.

Each defendant can, however, communicate such information as is necessary to the *bona fide* purchase or sale of Andersen brand products and accessories and Webb wood grilles or Coffman wood grilles between wholesale distributors. The proposed Judgment does not prohibit any communication between a defendant and its subsidiaries, affiliates or parent.

Each defendant must establish a program for dissemination of information concerning the Final Judgment as well as compliance with it. This program must involve each corporate officer, director, employee and agent having responsibilities or authority over the establishment of the wholesale prices at which Andersen brand products and accessories and wood grilles are sold, who must be advised of his obligations under the Judgment. Each defendant is required to furnish the Government within one hundred and twenty (120) days of the entry of the Final Judgment, and thereafter upon request, on or about the anniversary date of the Final Judgment for a period of five (5) consecutive years from the date of its entry, an account of all steps such defendant has taken the preceding year to discharge its obligations to comply with the Judgment and shall include with the account copies of all written directives issued during the prior year with respect to compliance with the terms of the Final Judgment.

*B. Scope of the Proposed Judgment*

The proposed Judgment applies to each defendant, its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. It applies to each defendant's activities anywhere in the United States.

The defendants are bound by the prohibitions of the proposed Judgment for ten years from the date of its entry.

*C. Effect of the Proposed Judgment on Competition*

The provisions of the proposed Final Judgment are designed to prevent any recurrence of the illegal conduct alleged in the Complaint and contain all of the relief sought in the Complaint. The proposed Judgment should ensure that no future agreements or combinations between or among the defendants to fix, raise, maintain, or stabilize the wholesale price of Andersen brand products and accessories and wood grilles will be arranged.

The proposed Judgment provides methods for determining defendants' compliance with the terms of the Judgment. The Antitrust Division, through duly authorized representatives, may interview officers, employees, and agents of each defendant regarding its compliance with the Judgment. Representatives of the Division are also given access, upon reasonable notice, to examine each defendant's records for possible violations of the Judgment and to request defendants to submit reports on matters contained in the Judgment.

Accordingly, the Government believes that the public interest is best served by the entry of the proposed Judgment. Further litigation would not result in any additional relief.

IV

**Alternative Remedies Considered by the Antitrust Division**

The defendants initially proposed a Final Judgment which the Government concluded would not ensure that the conspiracy charged in the Complaint would not continue or recur. The Government offered a counter-proposal from which the Final Judgment was negotiated.

The primary point of difference that was ultimately compromised between the parties related to the injunction prohibiting the defendants from purchasing from one another. The defendants drafted a proviso to Section IV(C) which authorized certain arm's-length dealings between wholesale distributors. The Government agreed to this modification since the conduct contemplated is lawful and does not increase the risk of recurrence of the illegal acts alledged in the Complaint.

The defendants also propose a proviso for Section III which would allow parents, subsidiaries, or affiliates to communicate with a defendant without violating the Judgment. The Government agreed because each defendant should properly be able to communicate directly with its parent, subsidiary or affiliate in carrying out the day-to-day business of the company. Such communications will not increase the risk of recurrence of the illegal conduct alleged in the Complaint.

At one point during the negotiations the Government considered requiring the Final Judgment to continue in existence for twenty-five years. However, the Government eventually concluded that a ten-year injunctive period would provide sufficient protection.

V

Remedies Available to Potential Private Litigation

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any such private actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this Final Judgment has no *prima facie* effect in any lawsuits which may be pending or hereafter brought against the defendants.

VI

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Ralph T. Giordano, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10007, within the sixty-day period provided by the Act. These comments and the Government's response to them, will be filed with the Court and published in the Federal Register. All comments received will be given due consideration by the Govement, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VII

Alternatives to the Proposed Final Judgment

The alternative to the proposed Judgment is a full trial on the merits. The Government considers the proposed Final Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides full relief against the violations charged in the Complaint.

VIII

Other Materials

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16) were considered in formulating this proposed Judgment. Consequently, none are submitted pursuant to such Section 2(b).

Dated: New York, New York, August 31, 1979.

Robert A. NcNew, Charles V. Reilly, Edwin Weiss, Stuart R. Grabois,

*Attorneys, Department of Justice, Antitrust Division, Room 3630, 26 Federal Plaza, New York, New york 10007.*

[FR Doc. 79-28711 Filed 9-14-79; 8:45 am]

BILLING CODE 4410-01-M

## United States v. City Linen, Coat & Apron Supply Service, Inc., et al.; Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of Florida, in Civil Action No. 76-1559-Civ.-CA, *United States of America* v. *City Linen, Coat & Apron Supply Service, Inc., et al.*

The complaint in this case alleges that the defendants, companies which are in the business of renting linen supplies, engaged in a conspiracy to allocate customers in southern Florida.

The proposed judgment prohibits the defendants from entering into any agreement, contract or understanding with each other or any other competitor to (1) allocate territories of customers; (2) refrain from soliciting the business of any customer; or (3) refrain from doing business with any customer. The defendants are futher prohibited from furnishing to or requesting from any competitor information on prices, terms of bids or identity of customers. For ten years, the defendants will be subject to certain prohibitions in their contractual relations with their customers.

The defendants are required to give notice of the Final Judgment to each of their linen service customers who pay rentals of less than $250 per week. The judgment also grants certain additional relief.

Public comment is invited within the statutory 60 day time period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Donald A. Kinkaid, Chief, Atlanta Field Office, Antitrust Division, United States Department of Justice, Suite 420, 1776 Peachtree Street, N.W., Atlanta, Georgia 30309.

Dated: August 31, 1979.

Charles F. B. McAleer,

*Special Assistant for Judgment Negotiations.*

U.S. District Court, Southern District of Florida

*United States of America*, Plaintiff, v. *City Linen, Coat and Apron Supply Service, Inc.; Southern Linen Supply and Laundry Company; American Service Corporation; Sanitary Linen Service Co. of Florida; and National Service Industries, Inc.*, Defendants.

Civil No. 76-1559-Civ—CA.

Filed: August 31, 1979.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A final Judgment in the form hereto attached may be filed and entord by the court, upon the motion of any party or upon the court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff or defendants in this or any other proceeding.

Dated: August 31, 1979.

For the Plaintiff:

John H. Shenefield,

*Assistant Attorney General.*

Joseph H. Widmar,

Donald A. Kinkaid,

*Attorneys, Antitrust Division, U.S. Department of Justice.*

Justin M. Nicholson,

Nicholas A. Lotito,

*Attorneys, Antitrust Division, U.S. Department of Justice.*

J. V. Eskenazi,

*United States Attorney.*

For the Defendants:

Daniel Neal Heller, Esq.,

*Heller and Kaplan, Attorney for: American Service Corporation, City Linen Coat and Apron Supply Service, Inc., Sanitary Linen Service Co., of Florida, Southern Linen Supply and Laundry Company.*

Joseph F. Haas, Esq.,

*Haas Holland Levison & Gilbert, Attorney for: National Service Industries, Inc.*

U.S. District Court, Southern District of Florida

*United States of America*, Plaintiff, v. *City Linen, Coat & Apron Supply Service, Inc.; Southern Linen Supply and Laundry Company; American Service Corporation; Sanitary Linen Service Co. of Florida; and National Service Industries, Inc.*, Defendants.

Civil No. 76-1559-Civ-CA.

Filed: August 31, 1979.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on September 9, 1976, and the defendants having appeared and filed their answers to the Complaint, and the plaintiff and the above-named defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and with this Final Judgment constituting any evidence against

or any admission by any party with respect to any issue of fact or law herein:

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, adjudged and decreed:

I

This Court has jurisdiction over the subject matter herein and the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Linen Rental Supplies" means towels, sheets, pillowcases, tablecloths, napkins, continuous roll towels, aprons, smocks, gowns and other similar items;

(B) "Linen Rental Business" means the business of renting or servicing linen rental supplies in South Florida;

(C) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity;

(D) "Operator" means any person engaged in the linen rental business;

(E) "South Florida" means the Counties of Palm Beach, Broward, Dade, and that part of Monroe County commonly referred to as the Florida Keys, in the State of Florida;

(F) A corporation "under common control" with a defendant shall mean any corporation (1) which is a subsidiary, directly or indirectly, of a parent corporation of a defendant or (2) 50% or more of whose stock is owned or controlled by a person who also owns or controls 50% or more of the stock of a defendant.

III

The provisions of this Final Judgment apply in South Florida only and are applicable to all defendants and to each of their subsidiaries, officers, directors, agents, employees, successors, and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, with any operator, any contract, agreement, understanding, plan, program, combination, or conspiracy to:

(A) Divide, allocate or apportion any market territory, customer or potential customer in connection with the rental or servicing of any linen rental supplies;

(B) Refrain from soliciting the linen rental business of any customer or potential customer;

(C) Refrain from renting or servicing any linen rental supplies to or for any customer or potential customer.

This Section IV shall not apply to (1) lawful covenants not to compete, which are part of a contract of sale of a linen rental business or an interest therein, entered into in good faith and on a nonreciprocal basis between a defendant and another person or (2) the enforcement of otherwise valid restrictive covenants ancillary to employment.

V

Each defendant is enjoined and restrained from directly or indirectly furnishing to or requesting or accepting from any operator (1) prices or charges, or (2) terms of bids or offers, or (3) the identity of customers, for the rental or servicing of any linen rental supplies in South Florida, except as provided in Section VII, *infra*.

VI

EAch defendant is enjoined and restrained, in any contract or agreement for the rental or servicing of linen rental supplies in South Florida, from directly or indirectly entering into, enforcing, furthering, adhering to, maintaining or claiming any right contrary to the following:

(A) No contract or agreement shall provide for a term longer than twenty-four (24) months from the date of its execution or last renewal, whichever is later.

(B) No contract or agreement shall contain a provision for automatic renewal unless:

(1) The provision for automatic renewal is printed in bold type immediately above the space provided for the customer signatures;

(2) The renewal term shall not exceed one year;

(3) The Contract provides that the customer may terminate the contract without penalty at any time within the renewal period upon ninety (90) days written notice to the defendant.

(C) No contract or agreement shall provide for liquidated or other formula damages in such unreasonable amount as to constitute a penalty.

This Section VI shall become effective sixty days (60) after the date of entry of this Final Judgment and shall remain in effect for a period of ten (10) years from that date. Provided, however, that contracts in existence on the effective date of this Judgment may continue for no longer than twenty-four (24) months from such effective date, whether by term of original contract or renewal period or a combination thereof, and any renewal period provided for in such contract shall be subject to termination by the customer at any time during such renewal period without penalty upon ninety (90) days written notice to the defendant.

The provisions of this Section VI shall not apply to any written agreement or specifications with a hospital or hotel or prepared or submitted by a customer.

VII

(A) For purposes of Sections IV, V and VI of this Final Judgment each defendant and its direct or indirect parent, or the defendant and a corporation under common control with it, shall be deemed to be one person;

(B) This Final Judgment shall not be construed to prohibit a defendant: (1) acting upon a bona fide belief that one or more of its contracts is being interfered with by another person or operator, from notifying that person or operator in writing of the contract; or (2) from pursuing in good faith its legal remedies or the resolution of legal claims with respect to tortious interference with a specific contractural relationship. For the purpose of this Section VII the term "tortious interference" shall be deemed not to include the contracting of a customer solely for the purpose of ascertaining whether the customer has a contractural relationship and, if so, the expiration date of such relationship.

(C) The provisions of Sections IV and V shall not apply to a bona fide transaction between a defendant and an operator (1) for the purchase or sale of a linen rental business or an interest therein; or (2) for the purchase of goods and services by a defendant, or the sale of goods and services by a defendant; or (3) for the exchange of information between a defendant and another operator solely for and necessary to such transactions;

(D) The provisions of this Final Judgment shall not be construed to prohibit a defendant from engaging with other operators in joint negotiations, agreements or activities, the sole purpose or effect of which is to deal with any labor disputes.

VIII

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of its total assets of its linen rental business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

IX

Within sixty (60) days of the entry of this Final Judgment each defendant shall mail or deliver to each of its linen rental customers who pays rentals of less than $250 per week either a copy of this Final Judgment or a notice of its entry, which notice shall also set forth, verbatim, the prohibitions of Section VI and the advice that the Judgment is available for inspection in the office of the Clerk of the United States District Court in Miami.

X

Each defendant is ordered and directed to:

(A) Furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers and directors, and to each of its employees and agents who has any supervisory responsibility for pricing or sales in its linen rental business in South Florida.

(B) Furnish a copy of this Final Judgment to each successor to those officers, directors, employees, or agents described in Paragraph (A) of this Section, within thirty (30) days after such successor is employed by or becomes associated with the defendant, except that directors who have no responsibility for pricing or sales in the linen rental business in South Florida must be furnished a copy of this Final Judgment within ninety (90) days after becoming associated with the defendant.

(C) File with this Court and with plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraph (A) of this Section; and

(D) Obtain, from each officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (A) of this Section, and from each successor to each such officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (B) of this Section, a written statement evidencing such

person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

XI

(A) Once each year, for a period of five (5) years, each defendant shall conduct an examination of its operations to determine compliance with the provisions of this Final Judgment. The scope of the examination shall include all linen rental business in South Florida. The persons conducting the examination must be given complete cooperation by all personnel of defendant and shall be given access to all books and records of the defendant.

(B) A detailed description by the defendant as to how the examination will be conducted is to be submitted to the plaintiff for approval within six (6) months after the date of entry of this Final Judgment.

(C) As soon as practicable after the anniversary date of this final Judgment, a report of the findings of each such examination shall be filed with the Court, the plaintiff, and submitted to responsible officers of the defendant.

XII

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice to a defendant made to its principal office, be permitted:

(1) Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any of the matters contained in the Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees, and agents of the defendant, any of whom may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by a defendant to the United States, the defendant represents and identifies in writing the material in any such information or documents to be that to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure or as otherwise provided by statute, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure" or as otherwise provided by statute, then ten (10) days' notice shall be given by the United States to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

Except as limited by specific provisions of this Final Judgment, the Final Judgment will expire ten (10) years after the date of its entry.

XV

Entry of this Final Judgment is in the public interest.

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*United States District Judge, Southern District of Florida.*

Dated:

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**U.S. District Court, Southern District of Florida**

*United States of America*, Plaintiff, v. *City Linen, Coat and Apron Supply Service, Inc.; Southern Linen Supply and Laundry Company; American Service Corporation; Sanitary Linen Service Co. of Florida; and National Service Industries, Inc.*, Defendants.

Civil No. 76-1559-Civ-CA.

Filed: August 31, 1979.

**Proposed Consent Decree, Competitive Impact Statement**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)-(h)), the United States of America hereby submits this Competitve Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

*I. Nature of the Proceeding*

On September 9, 1976, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. 4) alleging that the above-named defendants violated Section 1 of the Sherman Act (15 U.S.C. 1). The complaint alleges that the defendants and various co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in linen supplies, the substantial terms of which were to divide, allocate and apportion customers among the defendants and co-conspirators in South Florida.

Entry by the Court of the proposed consent judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

*II. Description of the Practices Involved in the Alleged Violation*

The defendants are engaged in the linen service industry, which is the business of renting and servicing linen supplies, in South Florida. Linen supplies are towels, sheets, pillowcases, tablecloths, napkins, continuous roll towels, aprons, smocks, gowns and other similar items. Typical customers for linen supplies would include hotels, motels, restaurants, barber shops, beauty shops, professional offices, hospitals, governmental agencies and other places of business.

The complaint in this case alleges that the defendants and co-conspirators engaged in a conspiracy from sometime prior to 1964, and continuing thereafter up to September 1974, the substantial terms of which were to divide, allocate and apportion linen service customers in South Florida. The complaint further alleges that the defendants and co-conspirators actually allocated customers as they agreed to do. The complaint also alleges that the conspiracy may recur unless enjoined by the Court. The market area alleged to have been affected by the conspiracy includes the Counties of Palm Beach, Broward, and Dade, and that part of Monroe County commonly referred to as the Florida Keys, in the State of Florida.

The complaint alleges that the conspiracy had the following effects, among others: (a) the flow of linen supplies in interstate commerce has been unreasonably restrained; (b) competition in the linen service industry in South Florida has been restrained; (c) the freedom of customers to do business with linen service companies of their choice has been restricted in South Florida; and (d) the prices charged by linen service companies in South Florida have been stabilized and maintained at non-competitive and artificial levels.

If this case had gone to trial, the Government would have adduced evidence to show that beginning sometime prior to 1964 and continuing until September 1974, the defendant and co-conspirator corporations allocated linen service customers. The evidence would have shown that although new customers without existing linen service were open to competitive solicitation, once a defendant succeeded in obtaining the linen service business of a customer, the other defendants and co-conspirators were to refrain from soliciting that customer or doing business with him. Attempts by dissatisfied customers to change from one linen service company to another were discouraged and prevented by the defendants and co-conspirators. On occasion, the defendants and co-conspirators exchanged certain customers or allowed each other to solicit certain customers for the purpose of maintaining proportionate volumes of business among themselves and without regard for the rights or wishes of the customers. The conspiracy was effectuated and carried out in a series of meetings and

telephone conversations among certain officers and managerial employees of the defendant and co-conspirator corporations.

*III. Explanation of the Proposed Consent Judgment*

The United States and the defendants have stipulated that the proposed consent judgment, in the form negotiated by and between the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

A. Prohibited Conduct. The provisions of the proposed judgment shall apply to the linen service operations of the defendants in South Florida. The proposed judgment prohibits the defendants from entering into any agreement, contract or understanding with each other or any other competitor to (1) allocate territories or customers; (2) refrain from soliciting the business of any customer; or (3) refrain from doing business with any customer. The defendants are further prohibited from furnishing to or requesting from any competitor information on prices, terms of bids or identity of customers.

For ten years, the defendants are prohibited from using customer contracts of longer than twenty-four months duration. The defendants are further prohibited from including within any customer contract any provison for automatic renewal unless: (1) the provision for automatic renewal is printed in bold type immediately above the space provided for the customer signatures; (2) the renewal term shall not exceed one year; and (3) the contract provides that the customer may terminate the contract without penalty at any time within the renewal period upon ninety days written notice to the defendant. The defendants are further prohibited from including within any customer contract any provision for penalty damages. The prohibitions enumerated in this paragraph shall not apply to any written agreement with a hospital or hotel, since these generally involve large negotiated contracts for linen supplies.

Each of the defendants is required to give notice of the Final Judgment to each of its linen service customers who pays rentals of less than $250 per week, since such customers are most vulnerable to the type of conduct prohibited by the decree.

The proposed consent judgment requires that each defendant furnish a copy of the judgment to each of its officers and directors, and to each of its employees and agents who have any responsibility for pricing or sales in its linen rental business in South Florida. Also, the defendant is required to furnish to the Court and the Plaintiff an affidavit as to the fact and manner of its notification of its officers, directors, employees and agents.

The proposed consent judgment requires that each defendant shall require, as a condition of the sale of the assets of its linen rental business, that the acquiring party agree to be bound by the provisions of the judgment.

The proposed consent judgment requires that for five years, each defendant conduct an annual examination of its operations to determine compliance with the provisions of the judgment. The findings of the examination shall be filed with the Court, and the plaintiff, and submitted to responsible officers of the defendant.

B. *Scope of the Proposed Judgment.* The proposed consent judgment will remain in effect for a period of ten (10) years from its entry. By its terms the judgment applies to the defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons who act in concert with the defendant, provided that such persons have actual notice of the judgment, by personal service or otherwise.

C. *Effect of the Proposed Judgment on Competition.* The relief encompassed in the proposed consent judgment is designed to prevent any recurrence of the activities alleged in the complaint. The prohibitive language of the judgment should ensure that future customer solicitation practices of the defendants will be independently determined, without the restraining and artificial influences which result from meetings and agreements between competitors.

The judgment provides two methods for determining the defendants' compliance with the terms of the judgment. First, the Government is given access, upon reasonable notice, to the records of the defendants, to examine these records for possible violations of the judgment, and to interview officers, directors, agents, partners or employees of the defendants. Second, the defendants may be required to submit written reports with respect to any matters contained in the proposed judgment.

It is the opinion of the Department of Justice that the proposed consent judgment contains fully adequate provisions to prevent future violations by these defendants of the type upon which this complaint is based and to ensure that the customer solicitation practices of the defendants are determined in a competitive atmosphere. In the Department's view, disposition of the law suit without further litigation is appropriate in that the proposed judgment provides all the relief which the Government sought by filing its complaint; the additional expense of litigation would therefore not result in additional public benefit.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act [15 U.S.C. 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act [15 U.S.C 16(a)], this consent judgment has no *prima facie* effect in any subsequent lawsuits which may be brought against these defendants.

*V. Procedures Available for Modification of the Proposed Judgment*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Donald A. Kinkaid, Antitrust Division, U.S. Department of Justice, 1776 Peachtree Street, N.W., Suite 420, Atlanta, Georgia 30309, within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

*VI. Alternatives to the Proposed Consent Judgment*

This case does not involve any unusual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent decree. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which reasonably could have been expected after trial.

*VII. Other Materials*

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)) were considered in formulating this proposed judgment.

Dated: August 31, 1979.

Justin M. Nicholson,

Nicholas A. Lotito,

*Attorneys, Antitrust Division, U.S. Department of Justice, Suite 420, 1776 Peachtree Street, N.W., Atlanta, GA 30309.*

Tel: (404) 881-3820, FTS 257-3820.

[FR Doc. 79-28710 Filed 9-14-79; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL SCIENCE FOUNDATION

### Cell Biology Subcommittee of the Advisory Committee for Physiology, Cellular and Molecular Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cell Biology of the Advisory Committee for Physiology, Cellular, and Molecular Biology.

Date: October 4, 5, and 6, 1979.

Time: 9 a.m. to 5 p.m. each day.

Place: Room 321, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. J. Eugene Fox, Program Director, Cell Biology Program, Room 333, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 634-4718.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Cell Biology.

Agenda: To review and evaluate research proposals as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Joyce F. Laplante,

*Acting Committee Management Coordinator.*

September 12, 1979.

[FR Doc. 79-28795 Filed 9-14-79; 8:45 am]

BILLING CODE 7555-01-M

## Ecological Sciences Subcommittee of the Advisory Committee for Environmental Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Ecological Sciences of the Advisory Committee for Environmental Biology.

Date and time: October 3, 4 and 5, 1979; 8:30 a.m. to 5 p.m. each day.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Part open—Open October 3, 1979, 9:30 a.m. to 2:30 p.m.; closed October 3, 1979, 8:30 a.m. to 9:30 a.m.; 2:30 p.m. to 5 p.m. and October 4, 1979 and October 5, 1979, 8:30 a.m. to 5 p.m.

Contact persons: Dr. David W. Johnston, Program Director, Ecology Program (202) 632-7324, and Dr. Melvin J. Dyer, Program Director, Ecosystem Studies Program (202) 632-5854, Room 336, National Science Foundation, Washington, D.C. 20550.

Summary minutes: May be obtained from contact persons, Dr. Johnston and Dr. Dyer, at above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in ecological sciences. Open part of the meeting to discuss long-range plans for the Ecology Program and Ecosystem Studies Program, and long-term ecological research.

Agenda: Closed—to review and evaluate research proposals and projects as part of the selection process for awards. Open—October 3, 1979, 9:30 a.m. to 2:30 p.m. Discussion to include long-range plans for the Ecology Program and Ecosystem Studies Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Managment Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Joyce F. Laplante,

*Acting Committee Management Coordinator.*

September 12, 1979.

[FR Doc. 79-28796 Filed 9-14-79; 8:45 am]

BILLING CODE 7555-01-M

## Mathematical Sciences Subcommittee of the Advisory Committee for Mathematical and Computer Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

**NAME:** Subcommittee on Mathematical Sciences of the Advisory Committee for Mathematical and Computer Sciences.

Date and time: October 5, 1979, 9 a.m. to 4 p.m.; October 6, 1979, 9:30 a.m. to 12:30 p.m.

Place: National Science Foundation, Room 338, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Part open—Open Sessions: October 5, 1979, 9 to 10 a.m. and 11:30 to 4 p.m.; October 6, 1979, 9:30 a.m. to 12:30 p.m. Closed Session: October 5, 1979, 10 a.m. to 11:30 a.m.

Contact person: Dr. William G. Rosen, Head, Mathematical Sciences Section, Room, 304, National Science Foundation, Washington, D.C. 20550, Telephone: (202) 632-7377.

Summary minutes: May be obtained from the contact person stated above.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the Mathematical Sciences.

Agenda:

Friday, October 5, 1979

9:00 a.m.—Greetings and introductions; William G. Rosen, Head, Mathematical Sciences Section.
9:30 a.m.—Election of chairman.
10:00 a.m.—Tentative plans for evaluating Mathematical Sciences Research Institute and other alternative modes of support proposals (Closed).
11:30 a.m.—Support of young investigators; Dr. Terrence Dolan, Head, NSF Staff Group on Support of Young Investigators.
12:30 p.m.—Lunch.
1:30 p.m.—Remarks by Assistant Director, MPS.
2:00 p.m.—Working group on postdoctoral support; preliminary report: Dr. W. Gilbert Strang.
3:00 p.m.—Working group on computers in mathematics research; preliminary report: Dr. Ronald Pyke.
4:00 p.m.—Report on August 17 review of Statistics program: Dr. Ronald Pyke.

Saturday, October 6, 1979

9:30 a.m.—Mathematical reviews; present situation.
10:30 a.m.—Fiscal year 1980 budget.
11:30 a.m.—Other business.
12:30 p.m.—Adjournment.

Reason for closing: The Subcommittee will be considering proposals for Mathematical Sciences Research Institute and other alternative modes of support. The proposals being considered include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Joyce F. Laplante,

*Acting Committee Management Coordinator.*

September 12, 1979.

[FR Doc. 79-28794 Filed 9-14-79; 8:45 am]

BILLING CODE 7555-01-M

# OFFICE OF MANAGEMENT AND BUDGET

## Agency Forms Under Review

### Background

September 12, 1979.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number

of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*):

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will present you from submitting comment promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447-6201

*Revisions*

Agricultural Stabilization and Conservation Service
Part 713 7 CFR Feed Grain, Wheat, and Upland Cotton
Regulations
On occasion
Farmers, 1 Response; 1 hour
Charles A. Ellett, 395-5080

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

*Extensions*

Departmental and Other
Record of Induction
DD-47
Other (See SF-83)
Registrants Inducted Into Armed Forces
Marsha D. Traynham, 395-6140

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488

*New Forms*

Alcohol, Drug Abuse and Mental Health Administration
Field Test of "CMC Panel Survey"
Single Time
CMHC's 42,000 responses; 4,667 hours
Off. of Federal Statistical Policy & Standard, 673-7974

National Institutes of Health
Questionnaire for Study of Moredity in Childhood Cancer Survivors and Offspring
Single Time
Cancer Survivors & Siblings From 4 Tumor Registries 6,474 responses; 3,237 hours
Off. of Federal Statistical Policy & Standard, 673-7974

Social Security Administration
* A Summary Report on Claims of Good Cause . . . and Case Report on Claim of Good Cause
SSA-4680 & SSA-4681
On Occasion
State Public Assistance Agencies or Caseworkers 40,000 responses; 7,746 hours
Barbara F. Young, 395-6132

*Revisions*

Alcohol, Drug Abuse and Mental Health Administration
CMHC Grant Applications Package
PHS-5161-1
On Occasion
Applicants for CMHC Grants—50 States & Territories 837 responses; 20,662 hours
Richard Eisinger, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755-5184

*New Forms*

Community Planning and Development
Survey of Urban County Technical Assistance Resources and Needs
Single Time
The Universe of 84 Urban County CDBG Recipients 84 Responses; 336 hours
Arnold Strasser, 395-5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633-3526

*New Forms*

Law Enforcement Assistance Administration
Survey on the Use of Management and Administrative Statistics (LEAA Series 2400)
Single time
State & Local Government Agencies & Researchers, 863 responses; 432 hours
Off. of Federal Statistical Policy & Standard, 673-7974

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523-6341

*New Forms*

Employment Standards Administration
Impact of Age Discrimination in Employment Act: Employee forms, Employer forms
ESA-99, 99A, 99B
Single time
Emp. Execu. in Firms w/20 or Mo. Wkrs. Ex. Fed. go. & Hi Wkr, 8,000 responses; 5,410 hours
Arnold Strasser, 395-5080

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887

*New Forms*

Coast Guard
Personal Flotation Device Survey
Single time
Recreational boatowners, 1,560 responses; 213 hours
Susan B. Geiger, 395-5867

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376-0436

*Revisions*

Bureau of Customs
*Inward Cargo Manifest for Vessel Under 5 Net Tons, Ferry, Train, Car, Vehicle, Etc.
Customs Form 7533
On occasion
Importers/Carriers, 500,000 responses; 16,650 hours
Susan B. Geiger, 395-5867

ACTION

Agency Clearance Office—W. D. Baldridge—254-7845

*New Forms*

Evaluation of the Juvenile Offender Service Learning Program
Single time
Students in Program, Cohorts & Supervisors, 190 responses, 190 hours
Barbara F. Young, 395-6132

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312-751-4693

*Revisions*

Report of Creditable Compensation Adjustments
BA-4
On occasion
Railroad Employers, 600 responses; 1,160 hours
Barbara F. Young, 395-6132

Stanley E. Morris,

*Deputy Associate Director for Regulatory Policy and Reports Management.*

[FR Doc. 79-28785 Filed 9-14-79; 8:45 am]

BILLING CODE 3110-01-M

## Privacy Act; New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect on such proposal on the privacy and other personal or property rights of individuals * * *"

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between August 20, 1979 and August 31, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of Justice

*System Name:*

DEA Air Wing Reporting System.

*Report Date:*

August 22, 1979.

*Point-of-Contact:*

Mr. William Snider, Administrative Counsel, Department of Justice, Washington, DC 20530.

*Summary:*

This new system will be used by the Drug Enforcement Agency to monitor its use of aircraft in drug law enforcement. The records will be used for two purposes: first, to review and analyze records on the use of pilots and aircraft, and second, to assure proper maintenance of aircraft and qualifications of pilots.

Nuclear Regulatory Commission

*System Name:*

Document Control System.

*Report Date:*

August 22, 1979.

*Point-of-Contact:*

Ms. Ellen Whitlow, FOIA/PA Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

*Summary:*

This new system of records will be used by the NRC to control and track correspondence and related documents originated in or received by the NRC. The categories of individuals will be NRC staff, contractors, and other correspondents with NRC.

Department of Defense

*System Name:*

Award Records for Military—OSD Personnel.

*Report Date:*

August 23, 1979.

*Point-of-Contact:*

Mr. William T. Cavaney, Executive Secretary, Defense Privacy Board, 2735 N. Lynn Street, Arlington, VA 22209.

*Summary:*

This system represents the consolidation of four existing systems of records: DOD Distinguished Service Medal Files, Joint Service Commendation Medal Recommendations File, DOD Superior Service Medal, and Defense Meritorious Service Medal Files. The purpose is to better track and assure issuance of approved awards to appropriate individuals.

*System Name:*

(1) Accounts Receivable System; (2) DODCI Lecture-Instructor.

*Report Date:*

August 23, 1979.

*Point-of-Contact:*

Mr. William T. Cavaney, Executive Secretary, Defense Privacy Board, Arlington, VA 22209.

*Summary:*

These are both new systems proposed by the Navy. The Accounts Receivable System is intended to control the collection of overpaid funds under the Federal Claims Collection Act. The second system will be used to assist in assigning course instructors and instruction teams both by subject matter and location. The records will include information about the lecturers' assignments, subjects in which they are proficient, and their titles.

*Waiver Requests*

OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports received between August 20, 1979 and August 31, 1979. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB.

Comments on the operation of the waiver procedure should be direct to OMB.

Department of Defense

*System Name:*

Naval Intelligence Management Information System.

*Report Date:*

August 23, 1979.

*Point-of-Contact:*

Mr. William T. Cavaney, Executive Secretary, Defense Privacy Board, Arlington, VA 22209.

*Summary:*

This system will be used to record and analyze assignments and tasks within the Naval Intelligence Command, for research analysis, the development of plans, policies and procedures. The system will also provide a historical record and statistics on tasks assigned to the Office of Naval Intelligence.

*Status:*

No action as of August 31, 1979.

David R. Leuthold,

*Budget and Management Office.*

[FR Doc. 79-28728 Filed 9-14-79; 8:45 am]

BILLING CODE 3110-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16151; File No. SR-Amex-79-12]

## American Stock Exchange, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on August 21, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms of Substance of Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") proposed to amend Exchange Rulds 921.05, 921.06 and 924.01 by deleting such rules. The texts of the proposed amendments are a follows (brackets indicate deletions):

Opening of Accounts

Rule 921. (a) through (e)—No change.

Commentary: .01 through .04—No change.

[.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the member organization for options trading, the member organization shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.]

[.06 Before approving an account of an investment partnership or an investment club for options trading, the member organization shall obtain written evidence of the authority of the person signing the agreement required by this Rule to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or members of the partnership or investment club.]

Discretionary Accounts

Rule 924 (a) through (c)—No change.

Commentary:

[.01 No transactions shall be executed in a discretionary account which would result in an uncovered short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of Rule 923.]

The purpose of the proposed changes is to delete certain portions of rule commentary that more properly belong within the ambit of member firm control and which can otherwise be dealt with, if needed, in exchange publications and joint SRO releases relating to supervisory guidelines and procedures.

The Amex believes it is appropriate to delete the provisions at this time in view of the numerous rule changes which will be proposed uniformly by the joint SRO Task Force in response to the SEC Options Study. (See SR-Amex-79-11 and SR-CBOE-79-9). Deletion of these provisions will bring the Exchange's rules into closer uniformity with the rules of the other options exchanges and the NASD, thus eliminating confusion and uncertainty on the part of both dual member firms and exchange personnel (primarily those who perform inspection and audit duties) as to differences in the rules of the SRO's.

Since the Options Study did not mention any of the specific provisions of the rules which are proposed to be deleted, the Task Force has not considered these matters in responding to the SEC recommendations. The Amex is submitting this file separate and apart from its file SR-Amex-79-11 to avoid confusion with the joint efforts of the Task Force.

It should be noted that each of the provisions proposed to be deleted have been part of the Amex rules since the start of the Exchange's options program. During this period of time, numerous member firms have pointed out the difficulty and impracticality in complying with these rules.

Rule 921.05—The Exchange believes that firms should be able to set their own guidelines and standards and make independent legal determinations as to whether or not sufficient basis exists to approve a third-party discretionary options trading account (i.e., an account where trading discretion is granted to a third person who is not an employee of the member organization) and not be confined, by Exchange rule, to require that the trading authority to such third-party specifically include options trading.

In certain cases, it is extremely difficult and impracticable (if not impossible) to amend a discretionary third-party trading authorization to include the word "options". Firms have noted that many attorneys and non-attorneys often use standard, "boiler-plate" forms which are intended to give the broadest possible investment and management powers, but which do not specifically include an options trading provision. Literally, such forms fail to meet the rigid requirements of this provision. To amend these forms, in some cases by application to a court, would be both time consuming and expensive and appear to serve little benefit except to meet technical conformity with this rule provision.

Those member firms which have commented on this rule believe that they should retain the right and bear the responsibility—based on the documentary items involved—to make their own legal determinations as to whether or not to accept and approve a particular third-party discretionary account for options trading.

Rule 921.06—Similarly, for the reasons noted above, the Exchange believes that firms should be able to make their own legal determinations as to whether or not a person purportedly acting on behalf of an investment club or partnership has proper authority to so act and not be confined, by Exchange rule, to require that such authority specifically includes options trading.

Oftentimes, investment clubs and partnerships use standard forms (for resolutions, articles, by-laws, etc.) to ease the way in transacting business, although many of such forms were designed prior to the commencement of listed options trading. While it may be the express intent of a partnership or club to engage in options transactions,

absence of the required options trading provision would not meet the requirements of the rule.

Also, the requirement that firms ascertain and track the options positions of individual partners and members of the investment partnership or club is a virtual impossible requirement. Deletion of this rule, however, will not relieve a firm from its duty to ensure that violations of the aggregation provision under the position limits rule do not occur. Thus, to the extent they are aware of such positions, firms would need to aggregate the personal option positions of those club members or partners who exercise control over the investment decisions of the club or partnership with the options positions of such club or partnership.

Rule 924.01—The Exchange believes that since firms are required to adopt supervisory procedures to ensure that any and all discretionary account transactions are suitable for customers, it is not necessary that they be prohibited, by Exchange rule, from executing certain specified transactions unless specifically authorized (e.g., the uncovering of a covered position or the establishment of a short position). Current and proposed suitability rules (Amex Rule 923 and CBOE Rule 9.9) and other requirements relating to supervision of accounts require firms to ensure that proper trading is conducted at all times in each customer's account. (See Amex Rule 922 and Regulatory Guidelines for Conducting a Public Business in Amex Listed Options, CBOE Rule 9.8 and Educational Circular No. 6). Accordingly, the Exchange believes the provisions of this rule can be deleted.

**Basis Under the Act for Proposed Rule Change**

The basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934 (the "1934 Act") as amended, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade protect investors and the public interest.

**Comments Received From Members, Participants or Others on Proposed Rule Change**

As noted in Item 3 above, in part, the amendments to Rules 921.05, 921.06 and 924.01 were proposed in response to oral comments made by member organizations. No written comments were solicited or received.

**Burden on Competition**

The proposed rule change will not impose any burden on competition and will bring the Amex rules in closer uniformity to the comparable rules of other options exchanges.

The proposed amendments to Rules 921.05, 921.06 and 924.01 were considered and approved by the Board of Governors on July 26, 1979.

On or before October 22, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before October 9, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

August 30, 1979.

[FR Doc. 79-28759 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 81-572]

## Data Documents, Inc.; Application and Opportunity for Hearing

September 4, 1979.

Notice is hereby given that Data Documents, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for exemption from the reporting requirements of Sections 13 and 15(d) of the 1934 Act.

The Application states, in part:

(1) Applicant, a Nebraska corporation, is a nationwide manufacturer-distributor of a line of supplies for data processing installations;

(2) Dictaphone Corporation acquired 99.7% of Applicant's outstanding equity securities pursuant to a tender offer of October, 1976. On May 11, 1979, Dictaphone was merged into a wholly-owned subsidiary of Pitney Bowes, Inc.. There are currently approximately 924 minority shares of Applicant held by approximately 45 shareholders;

(3) Applicant has outstanding $4,000,000 principal amount of 9¾% Series A Notes due July 1, 1983. These Notes are held by approximately 332 Noteholders; and

(4) Pitney Bowes has delivered to Applicant and to First national Bank & Trust Company of Lincoln, Trustee under the Indenture pursuant to which the Notes were issued, its guarantee of payment of principal and interest thereon.

Accordingly, Applicant believes that the order requested is appropriate because the Notes are the only class of security issued by Applicant still subject to the reporting provisions of the 1934 Act, and that it is the reports of Pitney Bowes, Inc., and not those of Applicant, in which investors would be primarily interested. Further, continued reporting would be burdensome and expensive to Applicant.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than October 1, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28763 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 16180; SR-OCC-78-5]

## The Options Clearing Corp. ("OCC"); Order Approving Proposed Rule Change

September 11, 1979.

On August 21, 1978, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change increasing the financial requirements for participation in OCC, enhancing the ability of OCC to gather information concerning the financial and operational capability of clearing members, and expanding the right of OCC to act to restrict members' activities and positions at OCC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-15086, August 24, 1978) and by publication in the Federal Register (43 FR 38754, August 30, 1978). By letter dated April 5, 1979, OCC amended its filing to include a procedure for an internal appeal to a committee composed of members of OCC's Board of Directors for members whose activities are restricted by OCC's President or Chairman pursuant to the proposed rule change. No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies, and in particular, the requirements of Section 17A and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28763 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 81-557]

## Pioneer Food Industries, Inc.; Application and Opportunity for Hearing

September 4, 1979.

Notice is hereby given that Pioneer Food Industries, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for an order exempting the Applicant from the reporting requirements of Section 15(d) of the Exchange Act.

The Applicant states, in part:

1. Pursuant to a statutory merger effected on June 29, 1979, Applicant was merged with and into The Pillsbury Company ("Pillsbury"). Each share of Applicant's common stock held by the public was converted into and exchanged for .47387 shares of Pillsbury common stock, and as a result of this merger Applicant is now a wholly owned subsidiary of Pillsbury and has no public shareholders.

2. Audited financial statements for Applicant for its fiscal year ended June 30, 1978, as well as unaudited financial statements for the six month period ended December 31, 1978, were contained in the proxy statement sent to Applicant's shareholders in connection with the merger.

3. The common stock of Pillsbury is registered with the Commission pursuant to Section 12(b) of the Exchange Act. Pillsbury files current, quarterly and annual reports pursuant to Section 13 of such Act.

4. Textual information regarding Applicant will be included in Pillsbury's Annual Report on Form 10-K for its fiscal year ended May 31, 1980.

In the absence of an exemption, Applicant is required to file reports pursuant to Section 15(d) of the Exchange Act and the rules and regulations thereunder for its fiscal year ended June 30, 1979. Applicant believes that the filing of such additional reports pursuant to Section 15(d) would be unnecessarily burdensome and of no consequence to investors.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 1100 L Street, NW., Washington, D.C. 20549.

Notice is further given that any interested person no later than October 1, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Committee's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28765 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 6122; 18-13]

## Price Waterhouse & Co. Retirement Income Plan for Partners and Principals; Filing of Application

*September 11, 1979.*

Notice is hereby given that Price Waterhouse & Co. ("Applicant"), 1251 Avenue of the Americas, New York, NY 10020, a public accounting firm organized as a partnership under the laws of the State of New York, has, by letters dated September 29, 1977, and August 7, 1979, applied for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Price Waterhouse & Co. Retirement Income Plan for Partners and Principals ("Plan"). All interested persons are referred to those documents, which are on file with the Commission, for the facts and representations contained therein, which are summarized below.

### I. Introduction

The Plan covers Applicant's partners and principals aged 25 or over. As of February 1, 1978, some 380 partners and 20 principals were eligible to participate in the Plan. In addition, the Plan covers about 10 partners of an affiliated partnership, which has adopted the Plan. "Principals" are persons employed by Applicant who do not hold certificates or licenses to practice accounting but who are deemed qualified for membership in the partnership.

The Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case, Applicant's partners and principals) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 ("Code") and, therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of certain employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

The Plan, which became effective as of January 1, 1977, is funded through a trust maintained under a trust agreement ("Trust Agreement") between Applicant and the Bank of New York, as trustee. The Internal Revenue Service has issued a ruling to the effect that the Plan is a qualified plan under Section 401(a) of the Code. The Plan is subject to the fiduciary standards and the full reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974.

Applicant states that it makes annual contributions to the Plan on behalf of all participants. Participants may also make voluntary contributions of not more than 10 percent of their share of partnership net income, with certain limitations. The investment and reinvestment of Plan assets are under the exclusive management of the bank trustees. Under the Trust Agreement, the assets are segregated into two funds: a fixed income fund, which consists primarily of bonds, notes, debentures and other evidences of indebtedness; and an Equity Fund, which consists primarily of common and preferred stocks. Applicant states that none of such assets are permitted to be commingled in any collective trust with assets of other plans.

III. Discussion

Applicant states that in excluding plans in which self-employed persons are participants from the exemption from registration afforded by Section 3(a)(2) of the Act, Congress appears to have intended to prevent the sale without registration of prepackaged plans offered by sponsoring financial institutions to self-employed persons who might not be sophisticated in the securities field or who might be unable adequately to protect their interests and those of their participating employees.

Applicant submits that the Plan covers partners, and principals of a single employer and of a closely affiliated smaller partnership. Thus, it does not present the risks associated with the sale of interests in multi-employer plans by sponsoring financial institutions with which Congress was primarily concerned. Applicant further submits that Plan participants are, by virtue of their professional backgrounds, far more sophisticated in the securities field than the average employee of an industrial corporation for which an automatic exemption would be available under Section 3(a)(2) of the Act.

Also, Applicant states that it is engaged in furnishing professional services of a type which necessarily involve financially sophisticated and complex matters and is therefore able to represent adequately its interests and those of Plan participants.

Applicant represents that it will not in any way promote or solicit voluntary contributions. Finally, Applicant will exercise substantial administrative responsibilities with respect to the Plan.

Applicant concludes that for the foregoing reasons granting the requested exemption would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 5, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following October 5, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28776 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 6124; 18-58]

## Salomon Bros. Profit Sharing Plan; Filing of Application

September 11, 1969.

Notice is hereby given that Salomon Brothers, an investment banking firm and registered broker-dealer organized as a New York limited partnership ("Applicant"), One New York Plaza, New York, NY 10004 on July 24, 1979 filed an application under Section 3(a)(2) of the Securities Act of 1933 (the "Act") for an order modifying an order set forth in Securities Act Release No. 5852 (August 10, 1977) declaring that interests or participations in the Salomon Brothers Profit Sharing Plan (the "Plan") are exempt from the provisions of Section 5 of the Act. All interested persons are referred to the application on file with the Commission for the facts and representations contained therein, which are summarized below.

I. Introduction

Applicant states that the Plan is of the type commonly referred to a "Keogh" plan, which covers persons (in this case Applicant's general partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 ("Code"), and therefore is excepted from the exemption from the registration provisions of the Act provided by Section 3(a)(2). Section 3(a)(2) also provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest of participation issued in connection with a pension or profit sharing plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In Securities Act Release No. 5852 (August 10, 1977), the

Commission ordered that, pursuant to Section 3(a)(2) of the Securities Act of 1933, interests or participation issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, provided that the Internal Revenue Service issues a favorable ruling with respect to the tax-qualified status of the Plan. Such a ruling was issued.

II. Modifications Requested

Applicant now requests certain modifications to the Commission's order to (a) make available under the Plan to participants additional investment alternatives, including the alternative of investing Plan assets in an open-ended, no-load, registered investment company with respect to which Applicant is administrator and distributor, (b) permit the Plan to accept rollover contributions directly or indirectly from other tax-exempt plans in accordance with applicable Internal Revenue Code requirements and (c) revise Applicant's undertaking made in connection with the prior application to require that participants be provided a copy of the Plan, without charge, only upon request.

In connection with the Plan's investment in the registered investment company, the Applicant has undertaken to pay to the Plan an amount equal to the fee it receives from the investment company attributable to the Plan's investment therein. Applicant states that the transaction is exempted from the prohibited transaction rules of the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code by Prohibited Transaction Exemption 77-3. Applicant also references the restrictions on dealings between the Applicant and the investment company imposed by Section 17 of the Investment Company Act of 1940. Applicant submits that these restrictions, together with the requirements of Prohibited Transaction Exemption No. 77-3 and ERISA and Applicant's agreement to pay to the plan an amount equal to the fee earned by applicant from the investment company attributable to assets of the Plan invested therein, satisfy any concern that may arise regarding Applicant's relationship to the investment company. Applicant's agreement to pay the allocable portion of its fee to the Plan is contingent upon the Division of Investment Management concluding that it would not recommend enforcement action by the Commission under Section 22(d) of the Investment Company Act of 1940 if Applicant proceeds as planned.

III. Applicant's Arguments

Applicant reiterates the arguments made in connection with the previous order granted by the Commission. Applicant contends that, although the Plan, because Applicant's partners participate in it, literally falls within the Keogh plan exception of the Section 3(a)(2) exemption, the legislative history of Section 3(a)(2) does not suggest any intent on the part of Congress to require that interests in single-employer Keogh plans be registered under the Act. Rather, Congress excepted interests issued in connection with Keogh plans from the Section 3(a)(2) exemption primarily out of concern over interests or participations in commingled or collective Keogh funds which might be marketed by sponsoring financial institutions to self-employed persons unsophisticated in the securities field. Applicant contends that the characteristics of the Plan are essentially typical of plans maintained by many single corporate employers for which Section 3(a)(2) provides an exemption, and that the concerns which resulted in inapplicability of Section 3(a)(2) to Keogh plans generally do not require registration of interests in Applicant's plan.

Applicant further contends that, if the Plan were amended, as permitted by the Internal Revenue Code, to exclude Applicant's partners, or if Applicant were a corporation, the Keogh plan exception to the Section 3(a)(2) exemption would not apply. Applicant asserts that the Plan is not a master or prototype plan marketed to the public by a sponsoring financial institution, the Plan assets are not invested in any such master or prototype plan and that the Plan, like the similar plans of large corporations, has been specifically tailored to meet Applicant's own particular requirements. Applicant argues, therefore, that to treat the Plan differently from a corporate plan merely because Applicant is organized as a partnership would exalt form over substance. Applicant contends that the Commission's exemptive authority under Section 3(a)(2) appears designed to permit the Commission to exempt plans like Applicant's where a substantial employer that is similar to a large corporation in all respects except for its form of organization, and which is sophisticated in complex financial and securities matters, creates and designs a plan for its employees and partners.

Finally, Applicant states that the disclosures required by ERISA and other disclosures to be made to Plan participants are additional grounds for granting the requested exemption.

Applicant concludes that, under the circumstances, granting the requested exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 1, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following October 1, 1979 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28767 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 81-337]

## Sambo's Restaurants, Inc.; Application and Opportunity for Hearing

September 4, 1979.

Notice is hereby given that Sambo's Restaurants, Inc. ("SRI"), on behalf of the Individual Restaurant Joint Ventures 1977-1978—1 through 200 (the "IRJV's"), Sambo's Master Rotation Groups—I through VI (the "Master Groups") and Sambo's Restaurant Group 1977-1978 (the "Restaurant Group") (the latter three collectively referred to as the "Applicants"), has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting the Applicants from filing a Form 10-K for the period ended

December 31, 1977, as required by the reporting provisions of Section 15(d) of that Act, all as more fully set forth below.

SRI states, in part:

(1) That the Applicants became subject to Section 15(d) of the 1934 Act as a result of a registration statement filed by SRI and the Applicants as co-registrants which was declared effective on December 22, 1977, with respect to up to 50—1% interests in each of the IRJV's, up to 583 Units per Master Group and up to 8,500 Units in the Restaurant Group;

(2) That at December 31, 1977, the close of the fiscal year of each of the Applicants, only IRJV's 1–78 had been formed, and SRI was the sole owner of 100% of all 1% interests in each of them. None of the Master Groups had been formed at this time; neither had the Restaurant Group. Consequently, none of the securities covered by the registration statement had been sold;

(3) That with respect to the IRJV's that had been formed, inasmuch as SRI was the sole joint venturer in each and the holder of all 1% interests, it had no need to deliver to itself an annual report containing audited financial statements;

(4) That with respect to the IRJV's that had not been formed, an annual report relating thereto would be totally uninformative;

(5) That requiring each IRJV to file an annual report on Form 10–K would be time consuming, costly (the filing fees alone would be $50,000) and would present no real information to any investor;

(6) That as joint venturers in the IRJV's the ultimate investors have significant rights to receive continuing financial information. Each IRJV's Joint Venture Agreement entitles them to receive monthly and annual unaudited reports, and any joint venturer may upon written demand cause an IRJV to have an audited annual report prepared, thus obviating the need for the protections provided by Section 15(d) of the 1934 Act;

(7) That with respect to the Master Groups and the Restaurant Group, (the "Groups") inasmuch as none of the Groups had been formed and none had sold any units or had any assets, any annual report prepared by any of the Groups would contain no material information of importance to investors or the general public;

(8) That although neither the Restaurant Group nor any Master Group had over 300 holders of record on December 31, 1977, the end of their fiscal years, thus suspending their duty to file reports under Section 15(d), any Groups which are actually formed during the 1978 fiscal year or subsequently will make the filings which would have otherwise been required by Section 15(d) commencing in the year which the Group is actually formed; and

(9) The Applicants believe that their request for an order exempting them from the provisions of Section 15(d) of the 1934 Act is not inconsistent with the public interest or the protection of investors in view of the facts and considerations as set forth above.

For a more detailed statement of the information presented, all persons are referred to the application which is on file in the offices of the Commission at 1100 L St., N.W., Washington, D.C. 20549.

Notice is further given that any interested person, not later than October 1, 1979, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79–28768 Filed 9–14–79; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. 10863; 812–4431]

## Selected Money Market Fund, Inc.

September 10, 1979.

Notice is hereby given that Selected Money Market Fund, Inc. ("Applicant"), 111 West Washington Street, Chicago, Illinois 60602, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 19, 1979, and an amendment thereto on August 31, 1979, for an order pursuant to Section 6(c) of the Act, amending Applicant's existing order of exemption from the provisions of Rules 2a–4 and 22c–1 under the Act (Investment Company Act Release No. 10663, April 17, 1979) to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant's existing order exempts it from the provisions of Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to compute its price per share for the purpose of sales and redemptions of its shares to the nearest one cent on a share value of one dollar.

Applicant represents that its investment objective is to maximize current income to the extent consistent with preservation of capital by investing in short-term debt instruments. All investments by Applicant must consist of obligations maturing within one year from the date of acquisition.

Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9789, May 31, 1977).

Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of

such security for redemption or of an order to purchase or sell such security.

Section 6(c) of the Act provides, in part, that the Commission upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that its board of directors has determined that, absent unusual circumstances, amortized cost value represents the fair value of its portfolio securities. Applicant's board of directors believes that this proposal will benefit both Applicant and its shareholders. Applicant asserts that, under an amortized cost valuation method, its shareholders would have the conveniences and advantages of a stable price of $1.00 per share.

Applicant consents to the following conditions to any order granting the relief requested in the application:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share and the maintenance of records of such review.

(b) In the event of such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by the board of directors.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, Applicant undertakes that if the disposition of the portfolio security results in a dollar-weighted portfolio maturity in excess of 120 days, Applicant will invest its available assets in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1. above, and will record, maintain, and preserve for a period not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or in the case of any instrument that is not so rated, of comparable quality, as determined by Applicant's board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such actions.

Notice if further given that any interested person may, not later than October 5, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 79-28769 Filed 9-14-79; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[License No. 05/08-0018]**

### Northland Capital Corp.; Filing of an Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Northland Capital Corporation (Northland), 613 Missabe Building, Duluth, Minnesota 55802, a Federal Licensee under the Small Business Investment Act of 1958,

as amended (Act), has filed an application pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1979)) for an exemption from the provisions of the conflict of interest regulation.

The exemption, if granted, will permit Northland to provide financing in the amount of $12,500 to Chattanooga Grand Prix, a newly formed limited partnership in which Northland will be a limited partner.

Chattanooga Grand Prix is building a race track for miniature race cars on property owned by Chattanooga Slides, Ltd. and is entering into a contract with Chattanooga Slides, Ltd. to manage the race track.

Messrs. Manley Goldfine and Max Rheinberger, Jr., both of whom are Directors of Northland will also be limited partners in Chattanooga Grand Prix. In addition, Messrs. Goldfine and Rheinberger are also limited partners in Chattanooga Slides, Ltd.

Pursuant to Paragraph (a) of the definition of "Associate of a Licensee" in § 107.3 of the Regulations, Messrs. Goldfine and Rheinberger are considered to be an Associate of Northland. As such the transaction will require an exemption pursuant to §-107.1004(b)(1) of the Regulations.

Notice is hereby given that any person may, no later than October 2, 1979, submit to the Small Business Administration, in writing, relevant comments on the proposed transaction. Any such communications should be addressed to Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Duluth, Minnesota.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 6, 1979.

Peter F. McNeish,

*Acting Associate Administrator for Finance and Investment.*

[FR Doc. 79-28744 Filed 9-14-79; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice 685]

## Fishery Conservation and Management Act of 1976; Applications for Permits To Fish Off Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the Federal Register.

Individual vessel applications for fishing 1979 have been received from Korea and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7265).

Dated: September 10, 1979.

Larry L. Snead,

*Acting Director, Office of Fisheries Affairs.*

BILLING CODE 4710-09-M

FISHERY CODES AND DESIGNATION OF REGIONAL COUNCILS WHICH REVIEW APPLICATIONS FOR INDIVIDUAL FISHERIES ARE AS FOLLOWS:

| CODE | FISHERY | REGIONAL COUNCIL |
|---|---|---|
| ABS | Atlantic Billfishes and Sharks | New England<br>Mid-Atlantic<br>South Atlantic<br>Gulf of Mexico<br>Caribbean |
| BSA | Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet | North Pacific |
| CRB | Crab (Bering Sea) | North Pacific |
| GOA | Gulf of Alaska | North Pacific |
| NWA | Northwest Atlantic | New England<br>Mid-Atlantic |
| SMT | Seamount Groundfish (Pacific Ocean) | Western Pacific |
| SNA | Snails (Bering Sea) | North Pacific |
| WOC | Washington, Oregon, California Trawl | Pacific |

ACTIVITY CODES SPECIFY CATEGORIES OF FISHING OPERATIONS APPLIED FOR AS FOLLOWS:

| ACTIVITY CODE | FISHING OPERATIONS |
|---|---|
| 1 | Catching, processing, and other support. |
| 2 | Processing and other support only. |
| 3 | Other support only. |

| NATION/VESSEL NAME/VESSEL TYPE | APPLICATION NO. | FISHERY | ACTIVITY |
|---|---|---|---|
| KOREA | | | |
| O DAE YANG NO. 216<br>LARGE STERN TRAWLER | KS-79-0096 | BSA, GOA | 3 |
| DONG SOO NO. 501<br>LARGE STERN TRAWLER | KS-79-0097 | BSA, GOA | 3 |
| M.V. OCEAN VIOLET<br>LARGE STERN TRAWLER | KS-79-0098 | BSA, GOA | 3 |

[FR Doc 79-28749 Filed 9-14-79; 8:45 am]
BILLING CODE 4710-09-C

[Public Notice CM-8/225]

## Shipping/Coordinating Committee, Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:00 a.m. on Wednesday, October 10, 1979 in Room 1101 West Tower, Waterside Mall, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The purpose of the meeting is to review position documents for the Fourth Consultative Meeting of the Contracting Parties of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, scheduled to be held in London October 22–26, 1979.

Requests for further information should be directed to Ms: Norma Hughes, Executive Secretary, Ocean Dumping Committee (WH-548), Environmental Protection Agency, Washington, D.C. 20460. Ms. Hughes may be reached by telephone on (202) 245-3051.

The Chairman will entertain comments from the public as time permits.

John Todd Stewart,
*Chairman, Shipping Coordinating Committee.*
September 6, 1979.

[FR Doc. 79-28783 Filed 9-14-79; 8:45 am]
BILLING CODE 4710-09-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD-79-128]

## National Boating Safety Advisory Council Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, October 9 & 10, 1979, at the Showboat Hotel, 2800 East Freemont, Las Vegas, Nevada, beginning at 9:00 a.m. on both days. The meeting is scheduled to recess at 4:00 p.m. on Tuesday, October 9, 1979, and adjourn at noon on Wednesday, October 10, 1979. The agenda for the meeting will be as follows:

1. Review of action taken at the Twenty-second Meeting of the Council
2. Executive Director's Report
3. Canoe Subcommittee Report
4. Visual Distress Signal Subcommittee Report
5. Vote on Proposed Rulemaking for Start-in-Gear Protection
6. Vote to determine advisability of excepting sailing boards with a universally hinged mast from PFD carriage requirements
7. Progress Report on Navigation Lights, Horns and the Unified Inland Rules
8. Report on Hull Identification Number Regulations
9. Update on Ventilation Requirements
10. Presentation on Capacity Plate Regulation Changes
11. Update on Improving Recreational Boating for the Physically Handicapped
12. Office of Boating Safety Report
13. Members Items
14. Chairman's Session

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at anytime. Additional information may be obtained from Commander Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA), Washington, D.C. 20590, or by calling (202) 426-1080.

Issued in Washington, D.C., September 6, 1979.

B. E. Thompson,
*Rear Admiral, U.S. Coast Guard, Chief, Office of Boating Safety.*

[FR Doc. 79-28802 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-14-M

### Federal Aviation Administration

[Summary Notice No. PE-79-20]

## Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemptions received and of dispositions of petitions issued.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before: October 3, 1979.

**ADDRESSES:** Send comments on any petition in triplicated to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3664.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 7, 1979.

Edward P Faberman,
*Acting Assistant Chief Counsel, Regulations and Enforcement Division.*

Petitions for Exemptions

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 19493 | Airlift Int'l Inc. | 14 CFR 121.389(a)(2) | The petitioner requests reconsideration of the FAA's denial of its application to allow a temporary exemption (60 days) to permit the continued use of a LORAN system which would be visible but not accessible to the pilot in command on two DC8-33 aircraft. |
| 16378 | American Telephone and Telegraph Company | 14 CFR 77.17(b) | Petitioner requests an extension of an exemption granted March 2, 1977, to the extent necessary to permit construction of temporary microwave towers, in the southeastern United States, without giving notice at least 30 days before the date the proposed construction is to begin or the date an application for a construction permit is to be filed. |
| 19492 | Transasian Airlines | 14 CFR 43.3 and 65.81 | To allow petitioner to permit foreign certificated airmen to conduct maintenance on U.S.-registered aircraft outside the United States. |

[FR Doc. 79-28580 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-13-M

## Radio Technical Commission for Aeronautics (RTCA), Special Committee 143—Ground Based Automated Weather Observation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Avisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 143—Ground Based Automated Weather Observation Equipment to be held on October 10, 1979, in RTCA Conferece Room 261, 1717 H Street, NW., Washington, D.C. commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of First Meeting held August 29 and 30, 1979; (3) Report on Status of Working Group Activities; (4) Assignment of Task; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; (202) 296-0184. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 7, 1979.

Karl F. Bierach,

*Designated Officer.*

[FR Doc. 79-28684 Filed 9-14-79; 8:45 am]
BILLING CODE 4910-13-M

## VETERANS' ADMINISTRATION

### Medical Research Service Merit Review Boards; Meetings

The Veterans' Administration gives notice pursuant to Public Law 92-463 of meetings of the following Merit Review Boards.

| Merit Review Board | Date | Time | Location |
|---|---|---|---|
| Infectious diseases | Oct. 3, 1979 | 8 a.m. to 5 p.m. | Beacon A, Sheraton-Boston.[1] |
| Hematology | Oct. 8, 1979 | do | Presidential Room, Holiday Inn.[2] |
| Immunology | Oct. 9, 1979 | 7 p.m. to 11 p.m. | Do. |
| Do | Oct. 10, 1979 | 8 a.m. to 5 p.m. | Do. |
| Oncology | Oct. 12, 1979 | do | Do. |
| Basic sciences | Oct. 18, 1979 | 7 p.m. to 11 p.m. | Do. |
| Do | Oct. 19, 1979 | 8 a.m. to 5 p.m. | Do. |
| Neurobiology | Oct. 18, 1979 | 7 p.m. to 11 p.m. | Do. |
| Do | Oct. 19, 1979 | 8 a.m. to 5 p.m. | Do. |
| Respiration | do | do | Durham Room, New Orleans Hilton Hotel.[3] |
| Alcoholism and drug dependence | Oct. 22, 1979 | do | Presidential Room, Holiday Inn. |
| Surgery | Oct. 26, 1979 | do | Parlor 523, The Conrad Hilton.[4] |
| Cardiovascular studies | Oct. 30, 1979 | do | Room 304, VA Central Office.[5] |
| Endocrinology | do | do | Presidential Room, Holiday Inn. |
| Gastroenterology | Nov. 5, 1979 | do | See directory for Room No. Hyatt Regency.[6] |
| Behavioral sciences | Nov. 8, 1979 | 7 p.m. to 11 p.m. | Presidential Room, Holiday Inn. |
| Do | Nov. 9, 1979 | 8 a.m. to 5 p.m. | Do. |
| Nephrology | Nov. 14, 1979 | do | Do. |

[1] Sheraton-Boston Hotel, 39 Dalton Street, Boston, MA 02199.
[2] Holiday Inn, 1501 Rhode Island Avenue N.W., Washington, DC 20005.
[3] New Orleans Hilton Hotel, #2 Poydras Street at Mississippi River, New Orleans, LA 70140
[4] The Conrad Hilton, 720 South Michigan Avenue, Chicago, IL 60605.
[5] Veterans Administration Central Office, 810 Vermont Avenue N.W., Washington, DC 20420
[6] Hyatt Regency, 151 E. Wacker Drive, Chicago, IL 60601.

These meetings will be for the purpose of evaluating scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration hospitals and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meetings involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. Closure of these meetings is in accordance with subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, and subsections 552(c)(6) and (9)(B) of title 5, United States Code.

Because of the limited seating capacity of the rooms, those who plan to attend should contact Jane S. Schultz, Ph.D., Chief, Program Development and Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389-5065 at least five days prior to each meeting. Minutes of the meeting and rosters of the members of the Boards may be obtained from this source.

By direction of the Administator.

Dated: September 10, 1979.

Rufus H. Wilson,

*Deputy Administrator.*

[FR Doc. 79-28737 Filed 9-14-79; 8:45 am]
BILLING CODE 8320-01-M

## INTERSTATE COMMERCE COMMISSION

[Ex Parte 311]

### Expedited Procedures for Recovery of Fuel Costs

Decided: September 11, 1979.

In our decision of September 5, 1979, a 9.5 percent surcharge was authorized on all owner-operator traffic, and on all truckload-rated traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level. In addition, a 1.7 percent surcharge was authorized on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators.

Although the weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload-rated traffic is 9.7 percent, we are authorizing that the surcharge for this traffic be held at 9.5 percent. All owner-operators are to receive compensation at the 9.5 percent level. In addition, no change will be made in the existing authorization of a 1.7 percent surcharge on LTL traffic performed by carriers not utilizing owner-operators.

Notice of this decision shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Board of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

*It is ordered:*

This decision shall become effective Friday at 12.01 a.m., September 14, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins, and Alexis. Commissioners Stafford, and Clapp absent and not participating.

Agatha L. Mergenovich,
*Secretary.*

**Fuel Surcharge**

*Base Date and Price Per Gallon (Including Tax)*

January 1, 1979—63.5¢

*Date of Current Price Measurement and Price Per Gallon (Including Tax)*

September 10, 1979—100.1

*Average Percent: Fuel Expenses (Including Taxes) of Total Revenue*

(1) From Transportation Performed by Owner Operators (Apply to All Truckload Rated Traffic)—16.9%

(2) Other (Including Less-Truckload Traffic)—2.9%[1]

*Percent Surcharge Developed*

(1) From Transportation Performed by Owner Operators—9.7%

(2) Other—1.7%

*Percent Surcharge Allowed*

(1) From Transportation Performed by Owner Operators—9.7%

(2) Other—1.7%

[FR Doc. 79-28734 Filed 9-14-79; 8:45 am]
BILLING CODE 7035-01-M

### Fourth Section Application for Relief

September 11, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before October 2, 1979.

FSA No. 43745, Consolidated Rail Corporation, demand sensitive rates on various commodities, in carloads, from stations in Delaware, New Jersey, and Pennsylvania to stations in Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, and West Virginia, in its Tariff ICC CR 3017, effective October 1, 1979. Grounds for relief—motor competition and improved car utilization.

By the Commission.
Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 28733 Filed 9-14-79; 8:45 am]
BILLING CODE 7035-01-M

[No. 37149 F]

### Kansas Intrastate Freight Rates and Charges—1979

Decided: September 7, 1979.

This proceeding was instituted by a decision served June 8, 1979, directing an investigation into the Kansas intrastate freight rates and charges maintained by the Atchison, Topeka and Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company, St. Louis-San Francisco Railway Company, and Union Pacific Railroad Company. The proceeding was directed for handling under the modified procedure by a decision served July 20, 1979.

By various petitions and letters, some late-filed, four additional railroads now seek intervention as respondents in this proceeding: Burlington Northern, Inc., Chicago, Rock Island and Pacific Railroad Company, Debtor, Kansas City Southern Railway Company, and Missouri Pacific Railroad Company. These four railroads have satisfied the requirements of 49 U.S.C. 11501 and 11502, and each has filed an application with the State Corporation of the State of Kansas requesting authority to increase its Kansas intrastate freight rates and charges to the same extent as authorized on interstate rates by this Commission in Ex Parte No. 357. The petitions and requests for intervention as respondents are granted.

In order to give additional time to the new respondents to file statements under the modified procedure, the decision served July 20, 1979, directing the modified procedure, will be canceled.

*It is ordered:*

The requests of Burlington Northern, Inc., Chicago, Rock Island and Pacific Railroad Company, Kansas City Southern Railway Company, and Missouri Pacific Railroad Company, for intervention in this proceeding as respondents are granted.

The order directing modified procedures served July 20, 1979, is canceled.

This proceeding shall be handled under the modified procedure, following rules 43 to 52 of the Commission's Rules of Practices, 49 CFR 1100.43–52. Filing and service of pleadings shall follow this schedule:

(a) Opening statement of facts and argument by respondent(s) and any parties supporting respondent(s) within 20 days of the service date of this order;

(b) 30 days after that date, statement of facts and argument by replicant(s) and any supporting parties; and

(c) Reply by respondent(s) and any supporting parties 20 days thereafter.

Replicant(s) shall timely advise respondent(s) and this Commission of the identity and addresses of the individuals composing the replicant's(s') defense committee, if any, and shall specify the number of copies of respondent(s') statement which are desired, and to whom the copies are to be sent.

A copy of this decision shall be served upon respondents The Atchison, Topeka and Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company, St. Louis-San Francisco Railway Company, Union Pacific Railroad Company, Burlington Northern,

[1] Additional data for general commodity carriers indicate the following: (a) Percent Fuel (including tax) of revenue (all traffic)—7.3%; (b) Percent T.L. and LTL Revenue of total revenue:

*Revenue and Percent*

T.L.—$3,451,661,000; 32%

LTL—$7,427,232,000; 68%

Total—$10,878,893,000; 100%

Utilizing the T.L. and LTL weighting factors and retaining the relationship of fuel to revenue for owner operators (also applied to T.L. rated traffic) and in total of 16.9 percent and 7.3 percent respectively, the comparable relationship for LTL is 2.9 percent. This figure should not be construed as an actual relationship but is developed as a method to adjust the LTL surcharge.

Inc., Chicago, Rock Island and Pacific Railroad Company, Debtor, Kansas City Southern Railway Company, and Missouri Pacific Railroad Company, and copies shall be sent by certified mail to the State Corporation Commission of the State of Kansas and the Governor of Kansas. Further notice of this proceeding shall be given to the public by depositing a copy of this decision in the Office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the Federal Register.

This is not a major Federal action significantly affecting the quality of the human environment. Furthermore, this decision is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

Agatha Mergenovich,

*Secretary.*

Participating Parties

Forest N. Krutter, Union Pacific Railroad Company, 1416 Dodge St.—Room 830, Omaha, Nebr. 68179.

Gus Svolos, General Counsel, The Atchison, Topeka and Santa Fe Railway Company, 80 E. Jackson Blvd., Chicago, Ill. 60604.

Robert H. Stahlheber, Missouri Pacific Railroad Co., 210 N. 13th St., St. Louis, Mo. 63103.

Henry E. Szachowicz, Jr., General Attorney, Chicago, Rock Island and Pacific Railroad Company, 332 S. Michigan Ave., Chicago, Ill. 60604.

Roth A. Gatewood, P.O. Box 1738, Topeka, Kans. 66628 (Counsel for: The Atchison, Topeka and Santa Fe Railway Company, Missouri-Kansas-Texas Railroad Company, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Burlington Northern, Kansas City Southern Lines, Chicago, Rock Island and Pacific Railroad Company, St. Louis-San Francisco Railway Company.

[FR Doc. 79-28731 Filed 9-14-79; 8:45 am]
BILLING CODE 7035-01-M

## Motor Carrier Temporary Authority Applications

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

MC 297 (Sub-10TA), filed July 20, 1979. Applicant: WOODLAND TRUCK LINE, INC., 635 Park Street, P.O. Box 70, Woodland, WA 98674. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, Oregon 97210. *Acids and chemicals, in containers and in trailers, and empty containers, trailers and chassis* between Kalama, WA on the one hand, and, Seattle, WA, and Tacoma, WA, on the other hand, restricted to traffic having a prior or subsequent movement by water for 180 days. A corresponding ETA, R-4 has been filed and a permanent will be filed within 30 days. Supporting shipper(s): Kalama Chemical, Inc., Suite 1110, Bank of California Center, Seattle, WA 98164. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 1977 (Sub-37TA), filed July 31, 1979. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe St., Denver, CO 80216. Representative: Leslie R. Kahl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Supporting shipper(s): Over 800 supporting statements. Send protests to: Roger L. Buchanan, ICC, 492 U.S. Customs House, Denver, CO 80202.

MC 11207 (Sub-499TA), filed July 20, 1979. Applicant: DEATON, INC., 317 Avenue W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C. 20014. *Malt beverages in containers* from Galveston and Houston, TX to Hattiesburg and Jackson, MS, for 180 days. Supporting shipper(s): Southern Beverage Co., 2000 West Pine Street, Hattiesburg, MS 39401. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 14286 (Sub-4TA), filed July 26, 1979. Applicant: MCO TRANSPORT, INC., 111 Cowan St., Wilmington, NC 28402. Representative: Charles D. Miller, 111 Cowan St., Wilmington, NC 28402. *General commodities, in containers, and empty containers having a prior or subsequent movement by water* between Morehead City, NC, on the one hand, and, on the other, points in NC and SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Marine Trans Freight Lines, Inc., Marine Terminal, Baltimore, MD 21222. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd., Rm CC516, Charlotte, NC 28205.

MC 26396 (Sub-279TA), filed July 24, 1979. Applicant: POPELKA TRUCKING CO. d/b/a THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Building materials* from Billings, MT to points in SD, NE, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Creative Materials Supply, Inc., 501 North 23rd, Billings, MT 59101. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 13726 (Sub-10TA), filed April 25, 1979. Applicant: WILSON TRUCKING, INC., P.O. Box 1, Linton, IN 47441. Representative: William E. Wilson, P.O. Box 1, Linton, IN 47441. *Aluminum chairs* from Linton, IN on the one hand and on the other, points in OH, IL, MI, KY, TN, and IN for 180 days. Supporting shipper(s): Keller Industries, Inc., 12th St. Road, Linton, IN 47441. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 41706 (Sub-21TA), filed July 26, 1979. Applicant: TOSE, INC., 424 W. 4th St., Bridgeport, PA 19405. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. *Candy and confectionery,* (1) between Naugatuck, CT, and York, PA; (2) from Hazelton, PA, to Naugatuck, CT for 180 days. An underlying ETA seeks

90 days authority. Supporting shipper(s): Peter Paul Cadbury, Inc., New Haven Road, Naugatuck, CT 06770. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila, PA 1906.

MC 42487 (Sub-936TA), filed July 27, 1979. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94035. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Common carrier; regular routes: *General Commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment; Between Sarasota, FL and Fort Myers, FL, serving all intermediate points, and the off-route points of Cape Coral, FL and Fort Myers Beach, FL; from Sarasota over U.S. Hwy 41 to Fort Myers, and return over the same route; between Fort Myers, FL and Miami, FL, serving no intermediate points; from Fort Myers over U.S. Hwy 41 to Miami, and return over the same route; between Fort Myers, FL and junction FL Hwy 80 and U.S. Hwy 27, serving no intermediate points except the junction of FL Hwy 80 and FL Hwy 29 at La Belle, FL for purpose of joinder only; from Fort Myers over FL Hwy 80 to junction FL Hwy 80 and U.S. Hwy 27, and return over the same route; between Palmdale, FL and junction FL Hwy 29 and FL Hwy 80 at La Belle, FL, serving no intermediate points; from Palmdale over FL Hwy 29 to junction FL Hwy 29 and FL Hwy 80, and return over the same route; Applicant seeks to serve all points in the Commercial Zones of authority authorized herein, for 180 days. Supporting shipper(s): There are in excess of 100 statements in support attached to this application which may be examined at the I.C.C. in Washington, D.C., or copies of which may be examined in the field office named below. Send protests to: D/S N.C. Foster, 211 main, Suite 500, San Francisco, CA 94105.

NOTE.—Applicant intends to tack the authorities described above. Also, applicant intends to tack to its existing authority and any authority it may acquire in the future. Applicant intends to tack the proposed authority with present service authority at Sarasota, FL, Miami, FL, Palmdale, FL and the junction FL Hwy 80 and U.S. Hwy 27 between Moore Haven, FL and Clewiston, FL. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Commission.

MC 45626 (Sub-73TA), filed July 6, 1979. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul Street, Burlington, VT 05402. Representative: John L. Dwyer (same address as applicant). *Passengers and their baggage and express and newspapers in the same vehicle with passengers, in special operations,* between points in VT on the one hand, and, on the other points in Warren, Clinton, Essex, St. Lawrence, Franklin, and Hamilton Counties, NY. Supporting shipper(s): There are 7 statements of support attached to application which may be examined at the ICC in Washington, DC or copies thereof may be examined at the field office named below. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 51146 (Sub-718TA), filed July 18, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Games and toys, recreation equipment and materials and supplies used in the manuacture and distribution of games and toys and recreation equipment,* between facilities of Schaper Mfg. Co. at or near Minneapolis, MN on the one hand, and, on the other, points in CT, MA, MD, NY, PA, RI, VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Schaper Mfg. Co., 9909 S. Shore Drive, Minneapolis, MN 55441. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-719TA), filed July 18, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Appliances NOI* from Dayton, OH to Milwaukee and Green Bay, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Morley-Murphy Co., 700 Morley Rd., Green Bay, WI 54303. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-720TA), filed July 18, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Building materials and accessories used in the manufacture, distribution and installation of doors and door sections* from Russia, OH to points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, ND, OH, PA, RI, SD, TN, VT, VA, WV, WI, & DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Clopay Corp., 101 Miller Rd., Russia, OH 45363. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-721TA), filed July 18, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Glass containers and equipment, supplies and accessories,* from Marion, IN and Burlington, WI to points in MI, KY, & IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corp., 8101 W. Higgins Rd., Chicago, IL 60631. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-722TA), filed July 19, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Salt,* in packages, from Chicago, IL to points in IN & MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Morton Salt Div. of Morton Norwich Products, Inc., 110 N. Wacker Drive, Chicago, IL 60606.

MC 51146 (Sub-723TA), filed July 20, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Windows, screens, doors, building woodwork, millwork, and equipment, materials, and supplies used in the distribution and installation thereof,* from Bayport, MN to points in DE, MD, NJ, NY, PA, VA, WV & DC, for 180 days. Supporting Shipper(s): Andersen Corp., Bayport, MN 55003. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619. Milwaukee, WI 53202.

MC 51146 (Sub-724TA), filed July 20, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Windows, screens, doors, building woodwork, millwork, and equipment, materials, and supplies used in the distribution and installation thereof,* from facilities of Andersen Corp., at Bayport, MN to points in IL, IN, IA, MI, OH & WI, for 180 days. Supporting Shipper(s): Andersen Corp., Bayport, MN 55003. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619. Milwaukee, WI 53202.

MC 51146 (Sub-725TA), filed July 20, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative:

John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Carpets,* from Walker, Murry, Gilmer, Chattooga, Fannin, Gordon, Floyd, Bartow, Pickens and Cherokee Counties, GA to Madison and Green Bay, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Coyle, Inc., P.O. Box 9406, Madison, WI 53715. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619. Milwaukee, WI 53202.

MC 51146 (Sub-726TA), filed July 26, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). (a) *Container, container ends, and closures;* (b) *commodities manufactured and distributed by manufacturers and distributors in mixed truckloads with containers;* and (c) *materials, equipment and supplies used in the manufacture of containers and closures* from facilities of Brockway Glass Co., Inc at Madison County, IN to points in MN & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Brockway Glass Co., Inc., McCullough Ave., Brockway, PA 15824. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-727TA), filed July 26, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). *Printed matter* from St. Cloud, MN to Stevens Point, WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Volkmuth Printers, Inc., P.O. Box 1007, St Cloud, MN 56301. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-728TA), filed July 26, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Canned and preserved foodstuffs* from facilities of Heinz USA at or near Fremont, OH to points in CT, MA, NJ, NY, & PA restricted to traffic originating at the named facilities and destined to the named states, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, div. of H.J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-729TA), filed July 27, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Electrical and gas appliances, parts of electrical and gas appliances, and equipment, materials, and supplies used in the manufacture, distribution and repair of electrical and gas appliances* from facilities of Whirlpool Corp. at Marion, OH to points in IA, MD, MA, MN, MS, NJ, NY, PA & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Whirlpool Corp., Adm. Center, Benton Harbor, MI 49022. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-730TA), filed July 27, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Games and toys, and equipment, materials and supplies used in the manufacture of games and toys* from Appleton and Hortonville, WI to points in and east of MN, IA, MO, AR & LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Toy & Furniture Co., 2605 N. Casa Loma Dr., Appleton, WI 54911. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-731TA), filed July 27, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil DuJardin (same address as applicant). *Plumbing fixtures and fittings* from facilities of The Kohler Co. located in Sheboygan County, WI to points in PA, NY, NJ, DE, MD, DC, CT, RI, MA, NH, VT, & ME, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kohler Co., Kohler Memorial Dr., Kohler, WI 53044. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 51146 (Sub-732TA), filed July 27, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). *Games and toys, recreation equipment & materials & supplies used in the manufacture and distribution of games and toys and recreation equipment* between the facilities of Schaper Mfg. Co. at or near Minneapolis, MN on the one hand, and, on the other, points in NJ & DE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Schaper Mfg. Co., 9909 S. Shore Dr., Minneapolis, MN 55441. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 59806 (Sub-16TA), filed July 26, 1979. Applicant: GROSS & HECHT TRUCKING, INC., 35 Brunswick Avenue, Edison, NJ 08817. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Contract, irregular. *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses, and materials, supplies and equipment used in the manufacture, sale and distribution of such commodities* (except commodities in bulk) Between Florence, NJ on the one hand, and, on the other, points in NY, PA, DE, MD, VA, CT and DC, for 180 days. Supporting shipper(s): Plus Discount Foods, Inc., 2 Paragon Drive, Montvale, NJ 07645. Send protests to: Irwin Rosen, T/S, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 63417 (Sub-232TA), filed June 20, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *New furniture and furniture parts* from the facilities of Stanley Furniture Co., a Mead Co., at or near Stanleytown, VA; Waynesboro, VA; and West End, NC, to points in MO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stanley Furniture Co., A Mead Co., Stanleytown, VA. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 63417 (Sub-233TA), filed July 26, 1979. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same as applicant). *Plastic articles, and equipment, materials, and supplies used in the manufacture and distribution of plastic articles (except commodities in bulk and those requiring special equipment)* between the facilities of Ft. Howard Paper Co. at or near Muskogee, OK and points in AL, AR, CO, FL, GA, IL, KS, KY, LA, MS, MO, NE, NM, NC, OK, SC, TN, TX, VA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ft. Howard Paper Co., P.O. Box 130, 1919 S. Broadway, Green Bay, WI 54305. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila. PA 19106.

MC 95876 (Sub-300TA), filed July 30, 1979. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue, North, St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). *(1) Irrigation systems; (2) Parts for irrigation systems; (3) Solar energy systems, fuel burning*

*heating appliances, and parts and accessories used in the installation, operation and maintenance of such systems or appliances; (4) Pipe, tubing, poles and such materials, equipment and supplies as are used in the installation and maintenance thereof; (5) Iron and steel articles; (6) Accessories, equipment, materials and supplies used in the manufacture or assembly of the commodities described in (1) through (5) above; and (7) Used irrigation systems and parts thereof* between the facilities of Valmont Industries, Inc. at or near Valley, NE, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK and TX, for 180 days. Supporting shipper(s): Valmont Industries, Inc., Valley, NE 68064. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 100666 (Sub-483TA), filed August 6, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address as applicant). *Hydraulic fluid, lubricants and anti-freeze* from the facilities of Shell Oil Co., and International Lubricants Corp., at or near New Orleans, LA to AR, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Specialty Oil of Arkansas, Inc., 10118 Col. Glenn Road, Little Rock, AR 72204. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 102567 (Sub-235TA), filed July 19, 1979. Applicant: McNAIR TRANSPORT INC., P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 Northwest Fwy. Suite 130, Houston, TX 77040. *Pulp mill liquids, in bulk, in tank vehicles*, from (1) Bastrop, LA to El Dorado, AR; and (2) El Dorado, AR to Bastrop, LA; Natchez, MS; Redwood, MS; Moss Point, MS; Mobile, AL; and S. Texarkana, TX, for 180 days. Applicant has filed an underlying ETA seeking 90 days. Supporting shipper(s): International Paper Company, P.O. Box 160707, Mobile, AL 36616. Send protests to: Robert J. Kirspel, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 105457 (Sub-100TA), filed July 26, 1979. Applicant: THURSTON MOTOR LINES, INC., 600 Johnston Rd., Charlotte, NC 28206. Representative: John V. Luckadoo (same as applicant). *(1) Tires, tire tubes, tire treads and (2) materials and supplies used in the manufacture, installation and distribution of commodities in (1) above* between Wilson, NC and Martinsburg, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Firestone Tire & Rubber Company, 1200 Firestone Parkway, Akron, OH 44317. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 105566 (Sub-202TA), filed August 6, 1979. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, 6901 Old Keene Mill Rd., Springfield, VA 22150. *General commodities* moving on bills of lading of the Delaware Valley Shippers Association from Bristol, PA to points in AZ, IL, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Delaware Valley Shipper's Association, 2209 Farragut Ave., Bristol, PA 19007. Send protests to: P. E. Binder, TS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 114457 (Sub-538TA), filed July 26, 1979. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). *Containers and container closures* from the facilities of the Continental Group, Inc. at or near Atlanta and Perry, GA to Milwaukee, WI and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Continental Group, Inc., 10050 Regency Circle, Omaha, NE 68114. Send protests to: Judith L. Olson, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 115826 (Sub-521TA), filed June 25, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Foodstuffs* from Houston, TX and its commercial zone to St. Louis, MO and its commercial zone, for 180 days. Supporting shipper(s): Private Brands, Inc., 4907 West Pine, St. Louis, MO 63108. Send protests to: H. Ruoff, 492 U.S. Customs House, Denver, CO 80202.

MC 115826 (Sub-522TA), filed July 18, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Meat* from Lubbock, TX and points within 125 miles of Lubbock, TX to Spokane and Yakima, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Western Excel Distributors, P.O. Box 17378, Portland, OR 97217. Send protests to: H. Ruoff, 492 U.S. Customs House, Denver, CO 80202.

MC 115826 (Sub-523TA), filed July 18, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Cheese, cheese products, synthetic cheese, materials and supplies used in the manufacture of cheese*, from facilities of L. D. Schreiber Cheese Co. at or near Logan, UT to points in AZ, AL, AR, CO, CT, DE, DC, FL, GA, IA, KS, IL, KY, LA, MD, MA, MN, NE, NJ, NY, PA, NC, SC, TN, TX and between Logan, UT, on the one hand, and on the other, points in WI and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, WI 54305. Send protests to: H. Ruoff, 492 U.S. Customs House, Denver, CO 80202.

MC 115826 (Sub-524TA), filed July 20, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Sodium bicarbonate, sodium carbonate and cleaning, scouring and washing compounds (except commodities in bulk, in tank vehicles)* from facilities of Church and Dwight Co., Inc., at Sweetwater Co., WY to points in NY, NJ, OH, TN, AL, NC, SC, FL, KY, VA, GA, for 180 days. Supporting shipper(s): Church & Dwight Company, Inc., P.O. Box 369, Piscataway, NJ 08854. Send protests to: H. Ruoff, 492 U.S. Customs House, Denver, CO 80202.

MC 116127 (Sub-8TA), filed July 25, 1979. Applicant: GEORGE D. CYRUS, INC., RFD No. 1, Iola, KS 66749. Representative: Charles H. Apt, P.O. Box 328, Iola, KS 66749. *Contract carrier: irregular routes: Petroleum Products in packages or containers and empty drums returned* from El Dorado, KS to all points and places in IL & IA, for 180 days. Supporting shipper(s): Getty Refining and Marketing Company, P.O. Box 1650, Tulsa, OK 74105. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 117686 (Sub-273TA), filed July 9, 1979. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same as above). *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides, skins and pieces thereof and liquid commodities in bulk)* from the facilities of Sioux Preme Packing at or near Sioux Center, IA to points in CA, OR and WA for 180 days. An underlying ETA seeks 90 days authority. Supporting

shipper(s): Sioux Preme Packing Company, Box 177, Hwy. 75 South, Sioux Center, IA 51250. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 117786 (Sub-71TA), filed July 26, 1979. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. *Paper labels or tags and related commodities,* from the facilities of Monarch Marketing Systems in Dayton, OH to Greenville, SC, for 180 days. Supporting Shipper: Monarch Marketing Systems, P.O. Box 608, Dayton, OH 45401. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. Supporting shippers[s]: Monarch Marketing Systems, P.O. Box 608, Dayton, OH 45401. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025.

MC 118457 (Sub-38TA), filed July 30, 1979. Applicant: ROBBINS DISTRIBUTING CO., INC., 11104 West Becher Street, West Allis, WI 53227. Representative: David Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. *Meats, meat products, meat byproducts, and articles distributed by meat packing houses (except hides and commodities in bulk)* in vehicles equipped with mechanical refrigeration, from Cudahy, WI to points in DC, DE, MD, NJ, NY & PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): A. N. WEISSMAN & SONS, INC., Weissman Place, Perth Amboy, NJ 08861. Send protest to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 118776 (Sub-36TA), filed June 26, 1979. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Lane, Quincy, IL 63201. Representative: Frank Taylor, Jr., suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. (1) *Air compressors, air compressor parts, power pumps, power parts, machine parts I/S, engines internal combustion and rough castings* from the facilities of Gardner-Denver Company, at or near Quincy, IL to the states of CO, KS, NB, OK, TX, MN, MO, IA, LA, AR, MS, WI, TN, MI, IN, KY, AL, GA, SC, NC, VA, DC, WV, OH, PA, NY, NJ, MD, CT, MA; and (2) material used in the manufacture of air compressors, air compressor parts, power pumps and power pump parts from points in states listed in (1) above to Quincy, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gardner-Denver Company, 1800 Gardner Expressway, Quincy, IL 62301. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 119226 (Sub-121TA), filed April 30, 1979. Applicant: LIQUID TRANSPORT CORP., 3901 Madison Avenue, Indianapolis, IN 46227. Representative: Robert W. Loser, 1101 Chamber of Commerce Building, Indianapolis, IN 46204. *Liquid chemicals,* in bulk, in tank vehicles, from the plantsite of International Minerals & Chemical Corporation, Terre Haute, IN, to points named here in the state of AL, AR, CO, CT, DE, FL, GA, KS, LA, ME, MD, MN, MS, NE, NH, NJ, NY, NC, OK, PA, RI, SC, TN, TX, VT, VA and WV, for 180 days. Supporting shipper: International Minerals & Chemical Corp., 421 E. Hawley Street, Mundelein, IL 60060. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio, St., Rm. 429, Indianapolis, IN 46204.

MC 119656 (Sub-64TA), filed July 24, 1979. Applicant: NORTH EXPRESS, INC., 219 South Main, Winamac, IN 46996. Representative: Donald W. Smith, suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Fabricated metal products,* from the plantsite of United States Gypsum Co., at Franklin Park, IL to points in IN, OH, NY, MI, KY, WV, MO and Erie, Crawford, Warren, Mercer, Venango, Forest, Lawrence, Butler, Clarion, Armstrong, Jefferson, IN; Westermoreland, Allegheny, Washington, Fayette, and Green counties, PA, for 180 days. Supporting shipper(s): United States Gypsum Company, 101 South Wackler Drive, Chicago, IL 60606. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 119726 (Sub-162TA), filed May 14, 1979. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, suite 1000, Indianapolis, IN 46204. *Glass containers* from Washington, PA to Cleveland, MS for 180 days. Supporting shipper(s): Brockway Glass Company, Inc., McCullough Ave., Brockway, PA 15824. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Indianapolis, IN 46204.

MC 119726 (Sub-163TA), filed May 14, 1979. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, suite 1000, Indianapolis, IN 46204. *Glass containers* from Streator, IL to Memphis, TN for 180 days. Supporting shipper(s): Thatcher Glass Glass Manufacturing Co., P.O. Box 265, Elmira, NY 14902. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Indianapolis, IN 46204.

MC 119726 (Sub-164TA), filed May 14, 1979. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, suite 1000, Indianapolis, IN 46204. *Paper and paper products and materials, equipment* between Tifton, GA and Savannah, GA, and points in CT, DE, FL, IL, IN, IA, KS, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, ND, OH, PA, RI, SD, VT, VA, WV, WI, and DC for 180 days. Supporting shipper(s): Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Indianapolis, IN 46204.

MC 124306 (Sub-64TA), filed July 25, 1979. Applicant: KENAN TRANSPORT CO., INC., P.O. Box 2729, Chapel Hill, NC 27514. Representative: W. David Fesperman (same as above). *Aqua ammonia, in bulk, in tank vehicles,* from Columbia, SC to points in GA, FL, NC and TN, for 180 days. Supporting shipper(s): National Ammonia Company, Tacony & Vankirk Sts., Philadelphia, PA 19135. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd., Rm CC516, Charlotte, NC 28205.

MC 124896 (Sub-95TA), filed July 9, 1979. Applicant: WILLIAMSON TRUCK LINES, INC., Box 3485, Wilson, NC 27893. Representative: Jack H. Blanshan, suite 200, 205 West Touhy Avenue, Park Ridge, IL 60078. *Meat, meat products and articles distributed by meat packinghouses (except in bulk)* from the facilities of Wilson Foods Corp. at Logansport, IN, Monmouth, IL, Marshall, MO, Omaha, NE to all points in the states of AL, NC, SC, GA and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corp., 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: Terrell Price, 800 Briar Creek Rd., Rm CC516, Charlotte, NC 28205.

MC 133566 (Sub-144TA), filed May 7, 1979. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Thomas J. Beener, suite 4959, One World Trade Center, New York, NY 10048. *Foodstuffs,* (except commodities in bulk), from the facilities of Globe Products Company, Inc., at Clifton, NJ, to points in NY, MA, CT, VT, NH, ME, PA, OK, CO, MD, OH, IN, IL, WI, MI, MN, IA, MO, TN, KY, WV, VA, NC, SC, GA, FL, AL, KS, NE and SD, for 180 days. Restricted to traffic originating

at the facilities of Globe Products Company, Inc. at the named origin. Supporting shipper(s): Globe Products Company, Inc., P.O. Box 1927, Clifton, NJ 07015. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 134806 (Sub-60TA), filed July 2, 1979. Applicant: D–D–R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC 20014. Contract carrier, irregular routes: *Aircraft parts, supplies and equipment used in the manufacture of sub assemblies and assemblies of aircraft,* from points in CA to points in CT, under a continuing contract or contracts with Sikorsky Aircraft Division of United Technologies Corporation. Supporting shipper(s): Sikorsky Aircraft Division of United Technologies Corporation Stratford, CT 06602. Send protests to: ICC, P.O. Box 548, Montpelier, VT 05602.

MC 135197 (Sub-23TA), filed July 12, 1979. Applicant: LEESER TRANSPORTATION, INC., Route 3, Palmyra, MO 65101. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Coal in Bulk, in dump vehicles,* from points at or near Mt. Sterling, IL to St. Louis, MO, for 180 days. Supporting shipper(s): Great American Energy Corp., Box 148, Mt. Sterling, IL 62353. Send protests to: Vernon V. Coble, D/S, ICC, Room 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

MC 136077 (Sub-15TA), filed July 16, 1979. Applicant: REBER CORPORATION, 2216 Old Arch Rd., Norristown, PA 19401. Representative: Sheri B. Friedman, 1600 Land Title Bldg., 100 S. Broad St., Phila., PA 19110. *Fly Ash, in bulk* from the terminals of National Minerals Corporation (1) at New Alexandria, PA and points within 25 miles thereof; (2) at Indiana, PA, and points within 25 miles thereof; (3) at Titus Station, Reading, PA; to points in NY, CT, RI, MA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Minerals Corp., R.D. #4, Box 189–B, Indiana, PA 15701. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 136366 (Sub-3TA), filed July 27, 1979. Applicant: BEE LINE, INC., 17 Commerce Road, Fairfield, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. (1) *Toilet preparations,* from West Caldwell, NJ to Elm City, NC and Ashland, OH. (2) *Machinery for making penicillin,* from Newark, NJ to Kenly, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ivers-Lee Division of Becton Dickenson Co., 147 Clinton Road, West Caldwell, NJ 07006. Send protests to: Irwin Rosen, Transportation Specialist, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

MC 138157 (Sub-175TA), filed July 24, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC. d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant). *Chemicals and materials, equipment and supplies used in the manufacture, sale and distribution of chemicals (except in bulk)* from points in AL, CO, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, NY, NC, OH, PA, SD, SC, TN, TX, WV, WI, and WY to points in AZ, CA, CO, OR & WA, for 180 days. Supporting shipper(s): Foremost-McKesson, Inc., One Post Street, San Francisco, CA 94104. Send protests to: Glenda Kuss, TA, ICC Suite A–422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138157 (Sub-176TA), filed July 24, 1979. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant). *Merchandise sold in and distributed by retail drug stores (except in bulk)* from Smyrna, GA and Grand Prairie, TX to City of Industry, CA, for 180 days. RESTRICTION: Restricted to traffic originating at or destined to the facilities of Valu-Rite Pharmacies and further restricted against commodities in bulk and commodities which by reason of size or weight require the use of special equipment. Supporting shipper(s): Foremost McKesson, Inc., One Post Street, San Francisco, CA 94104. Send protests to: Glenda Kuss, TA, ICC, Suite A–422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 138627 (Sub-77TA), filed July 19, 1979. Applicant: Smithway Motor Xpress, Inc., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, 7101 Mercy Rd. Suite 106, Omaha, NE 68106. Iron and Steel articles, from the facilities of Simcote, Inc. at St. Paul, MN to points in AR, IL, IN, IA, KS, KY, MI, MO, NE, ND, OH, OK, OR, SD, TN, WA, WV, WI, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Simcote, Inc., 1645 Red Rock Rd., P.O. Box 97, Newport, MN 55055. Send protests to: Herbert W. Allen, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, IA 50309.

MC 138826 (Sub-9TA), filed July 11, 1979. Applicant: JERALD HEDRICK d.b.a., HEDRICK & SON TRUCKING, Rural Route #1, Warren, IN 46792. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. *Animal and poultry feed and feed ingredients* between Lafayette, IN, on the one hand, and, on the other, points in MI, NY, OH and PA for 180 days. Supporting shipper: Ralston Purina Company, P.O. Box 119, Lafayette, IN 47902. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio Street, Rm. 429, Indianapolis, IN 46204.

MC 139206 (Sub-59TA), filed August 6, 1979. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Dr., Maryland Heights, MO 64043. Representative: R. C. Mitchell (same as above). *General commodities,* with the usual exceptions, from the facilities of Mead Johnson Terminal, Inc., at or near Evansville, IN, to points in IN, IL, MO, MI, OH, KY, TN, WV, PA, MN, IA and WI, restricted to traffic having a prior movement by rail or water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mead Johnson Terminal, Inc., 1830 W. Ohio St., Evansville, IN 47712. Send protests to: P. E. Binder, TS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 139906 (Sub-68TA), filed July 12, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Such commodities as are dealt in by retail and department stores and equipment, materials and supplies used in the conduct of such business (except foodstuffs and commodities in bulk).* From Stockton, CA to Atlanta, GA and points in their commercial zones, for 180 days. Supporting shipper(s): J. C. Penney Co., Inc., 1301 Avenue of the Americas, New York, NY 10019. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 140186 (Sub-38TA), filed July 24, 1979. Applicant: TIGER TRANSPORTATION INC., P.O. Box 2248, Missoula, MT 59801. Representative: Joel E. Guthals, Esq., P.O. Box 2533, Billings, MT 59103. *Petroleum products, lubrication oil and greases* from points in OK to points in AZ, CA, CO, ID, MT, NE, ND, NM, NV, OR, SD, TX, UT, WA and WY for 180 days. Supporting shipper(s): Husky Oil Company, 600 South Cherry St., Denver, CO 80222. Send protests to: Paul J.

Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 141297 (Sub-4TA), filed July 26, 1979. Applicant: UNITED INDUSTRIES, INC., 487 Parish St., Houston, MS 38851. Representative: Thomas B. Davis (same as applicant). *Contract-carrier:* irregular routes: (1) *New furniture and furnishings,* from points in MS to the facilities of Montgomery Ward in AL, AZ, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MS, NE, NJ, NM, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, WI, and DC; and (2) *raw materials used in the manufacture of furniture* from points in destination states in (1) above to the plant facilities of Shannon Chair Co., Houston, MS and Maben Manufacturing Co., Maben, MS, for 180 days. NOTE: Restricted to transportation performed under continuing contracts with Montgomery Ward, Shannon Chair Co. and Maben Manufacturing Co. Supporting shipper(s): Montgomery Ward, 535 W. Chicago Ave., Chicago, IL 60671. Shannon Chair Co., and Maben Manufacturing Co. P.O. Box 589, Houston, MS 38851. Send protests to: Alan Tarrant, D/S, ICC, Federal Bldg., Suite 1441, 100 W. Capitol St., Jackson, MS 39201.

MC 141426 (Sub-25TA), filed July 6, 1979. Applicant: WHEATON CARTAGE CO., Wheaton Avenue, Millville, NJ 08332. Representative: Lester R. Gutman, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. Contract carrier, irregular routes for 180 days. Medical, surgical and hospital supplies from Sumter, SC to Parsippany, NJ and North Canaan, CT. An underlying ETA seeks 90 days authority. Supporting shipper(s): Becton Dickinson & Company, Rutherford, NJ 07070. Send protests to: Irwin Rosen, TS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 141396 (Sub-6TA), filed July 9, 1979. Applicant: DELP, INC., P.O. Box 369, Springdale, AR 72764. Representative: Stanley W. Ludwig, P.O. Box 285, Springdale, AR 72764. *Frozen potato products* in vehicles equipped with mechanical refrigeration from the plant facilities of Mid-America Potato Co. at or near Grand Rapids, Lake Odessa, Martin and Muskegon, MI to AL, AR, FL, GA, LA, MS, NC, SC, TN, TX and VA for 180 days. Underlying ETA sought corresponding authority for 90 days. Supporting shipper(s): Mid-America Potato Co., P.O. Box 2064, Grand Rapids, MI 49501. Send protests to: William H. Land, DS, 3108 Federal Bldg., Little Rock, AR 72201.

MC 142096 (Sub-15TA), filed July 19, 1979. Applicant: MILLER BROS. TRUCKING CO., INC., 4100 W. Mitchell St., Milwaukee, WI 53215. Representative: James Spiegel, 6425 Odana Rd., Madison, WI 53719. *Glass containers and equipment, supplies and accessories* between Burlington, WI and Marian, IN on the one hand, and, on the other, points in IL, IN, MI, & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corp., 8101 W. Higgins Rd., Chicago, IL 60631. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 142686 (Sub-23TA), filed July 5, 1979. Applicant: MID-WESTERN TRANSPORT, INC., 10506 South Shoemaker Avenue, Santa Fe Springs, CA 90670. Representative: Joseph Fazio (same address as applicant). *Contract:* irregular: *Alcoholic beverages,* from Melville, MI; Clermont, KY; Lawrenceburg, IN; and Louisville, KY to Los Angeles County, CA, for 180 days. Supporting shipper(s): Drummon Distributing Company, 1715 South Anderson Avenue, Compton, CA 90220. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 142826 (Sub-2TA), filed May 7, 1979. Applicant: LOUIS H. CHAUVIN, INC., 6081 Mud Mill Road, Brewerton, NY 13029. Representative: Same as above. *Contract,* irregular routes: *Brewers wet grain, brewers pressed grain, brewers condensed solubles, brewers waste yeast, maltlage and/or brewlage,* from the facilities of Jos. Schlitz Brewing Company and Murphy Products Company, Inc. in Liverpool and Brewerton, NY to all points and places in VT, CT, MA, PA and NJ for 180 days. Underlying ETA for 90 days granted under R-4 with effective data of May 8, 1979. Permanent will be filed. Supporting shipper(s): Murphy Products Co., Inc., Michael J. Anuta, Dir. Distribution, 124 S. Dodge Street, Burlington, WI 53105. Send protests to: Interstate Commerce Commission, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

MC 143436 (Sub-32TA), filed July 2, 1979. Applicant: CONTROLLED TEMPERATURE TRANSIT, INC., 9049 Stonegate Road, Indianapolis, IN 46227. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. *Foodstuffs (except in bulk) in vehicles equipped with mechanical refrigeration* from the facilities of Hershey Foods Corporation at or near Cincinnati, OH to points in KY for 180 days. Supporting shipper: Hershey Foods Corporation, 19 E. Chocolate Avenue, Hershey, PA 17033. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46, E. Ohio Street, Rm 429, Indianapolis, IN 46204.

MC 143607 (Sub-12TA), filed July 23, 1979. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Route 6, Box 2611, Waco, TX 76706. Representative: Arthur W. Grimes, Rt. 6 Box 2611, Waco, TX 76706. *Contract carrier*—irregular route—*Packaged products* from the facilities of Hi-Port Industries at or near Hi-Port Industries at or near Highlands, TX to Evansville, WY Grand Junction, CO, Pueblo, CO, Cameron, MO, Springfield, MO, Atlanta, GA, Waynesboro, GA, Albany, GA, Little Rock and North Little Rock, AR, and points in OK for 180 days. Supporting shipper(s): Hi-Port Industries, P.O. Box 755, Highlands, TX 77562. Send protests to: Martha A. Powell, Trans. Assistance, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 144616 (Sub-5TA), filed July 31, 1979. Applicant TRUCKS, INC., P.O. Box 79113, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112. *Fresh meats,* from Shreveport, LA to Montgomery, AL, for 180 days. An underlying ETA seeking 90 days authority filed. Supporting shippers(s): John Morrell & Co., 208 S. La Salle Street, Chicago, IL 60604. Send protests to: Martha A. Powell, TCS, I.C.C., Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 144736 (Sub-1TA), filed July 27, 1979. Applicant ROBINSON TRANSFER COMPANY, INC., 1809 St. James Street, Box 25, LaCrosse, WI 54601. Representative: Richard Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Lumber and compressed wood products* from facilities of Weyerhaeuser Co. at or near Marshfield and Independence, WI and St. Paul, MN; the facilities of Neumann Wood Processors, Inc. at or near LaCrosse, WI; and the facilities of Robert Herbst & Assoc. at or near Elk Mound, WI to points in IL, IN, IA, MI, MN, MO & WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Weyerhaeuser Co., 100 S. Wacker Drive, Chicago, IL 60606. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145577 (Sub-13TA), filed May 2, 1979. Applicant GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. *Compressors, liquid or gas, and evaporator coils* from Hartselle, AL to City of Industry, CA for 180 days. Supporting shipper: BDP Company, 855

Anaheim-Puente Road, La Puente, CA 91749. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio Street, Room 429, Indianapolis, IN 46204.

MC 145746 (Sub-3TA), filed July 27, 1979. Applicant: MINDEMANN TRUCKING, INC., N63 W22985 Main Street, Sussex, WI 53089. Representative: James Spiegel, 6425 Odana Road, Madison, WI 53719. Contract carrier; irregular routes; *Rough and cut stone, crushed stone and gravel and stone products* between Waukesha County, WI on the one hand, and on the other hand, points in IA, IL, IN, MI, MO, MN and OH, restricted to transportation to be performed under a continuing contract(s) with Halquist Stone Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Halquist Stone Co., Inc., N52 W23564 Lisbon Road, Sussex, WI 53089. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145956 (Sub-5TA), filed August 6, 1979. Applicant: TRANSMEDIC CARRIERS, INC., P.O. Box 1394, Largo, FL 33540. Representative: Paul Meilleur, 1340 Indian Rocks Road, Belleair, FL 33516. *Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses and material, equipment and supplies used in connection therewith* (except frozen commodities in bulk) between the plantsite of Colgate-Palmolive Co., Jeffersonville, IN and points in the states of IL, MI, OH, KY, TX, GA, FL and LA for 180 days. An underling ETA seeks 90 days authority. Supporting shipper(s): Colgate-Palmolive Co., State & Woerner Streets, Jeffersonville, IN 47130. Send protests to: Donna M. Jones, T/A, ICC—BOp, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 146256 (Sub-5TA), filed July 2, 1979. Applicant: SHORT LINE TRUCKING CO., INC., P.O. Box 20026, Louisville, KY 40220. Representative: Lavern R. Holdeman, 521 So. 14th Street, (P.O. Box 81849), Lincoln, NE 68501. (1) Such commodities as are dealt in by wholesale and retail chain grocery and food business houses (except frozen commodities and commodities in bulk), and (2) materials, equipment and supplies used in the manufacture, sale, and distribution of commodities listed in part (1) above (except frozen commodities and commodities in bulk), between the facilities of Colgate-Palmolive Company, Inc., at or near Jeffersonville, IN, on the one hand, and, on the other, points in the states of IL and WI. Supporting shipper(s): H. Robert Schroeder, Colgate-Palmolive Company, State & Uberner Streets, Jeffersonville, IN 47130. Send protests to: Mrs. Linda H. Sypher, D/S, ICC, 426 Post Office Building, Louisville, KY 40202.

MC 146646 (Sub-15TA), filed July 20, 1979. Applicant: BRISTOW TRUCKING CO., P.O. Box 6355, Birmingham, AL 35217. Representative: Henry Bristow, Jr. (same address as applicant). *(1) Charcoal, wood chips, vermiculite, lighter fluid, and wax impregnated and compressed-sawdust fireplace logs* from Tucker County, WV to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC and *(2) materials, supplies and equipment used in the manufacture of charcoal, wood chips, vermiculite, lighter fluid, and wax impregnated and compressed sawdust fireplace logs* (2) from AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC to Tucker County, WV, for 180 days. Supporting shipper(s): The Kingsford Co., P.O. Box 1033, 1700 Commonwealth Building, Louisville, KY 40201. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 146646 (Sub-16TA), filed July 20, 1979. Applicant: BRISTOW TRUCKING CO., P.O. Box 6355, Birmingham, AL 35217. Representative: Henry Bristow (same address as applicant). *Charcoal briquets,* from the facilities of The Kingsford Company located at or near Dothan, AL to points in AZ, NM, and TX. Supporting shipper(s): The Kingsford Co., P.O. Box 1033, 1700 Commonwealth Building, Louisville, KY. Send protests to: Mabel E. Holston, T/A, ICC, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 146687 (Sub-2TA), filed April 25, 1979. Applicant: MARV'S PICK-UP & DELIVERY, INC., 2040 South Lynhurst, Suite O, Indianapolis, IN 46241. Representative: Stephen M. Gentry, 1500 Main Street, Speedway, IN 46224. *General Commodities* (except those of unusual value, classes A & B explosives, household goods, as defined by the Commission, commodities in bulk and those requiring special equipment) between Indianapolis International Airport located at or near Indianapolis, IN on the one hand, and, on the other, Bartholomew, Blackford, Cass, Daviess, Delaware, Dubois, Gibson, Grant, Henry, Howard, Jackson, Jennings, Knox, Lawrence, Madison, Miami, Monroe, Montgomery, Orange, Owen, Posey, Putnam, Tipton, and Wayne Counties, IN, for 180 days. Restriction: Restricted to shipments having a prior or subsequent movement by air. Supporting shipper: Amerford International Corp., 1936 S. Lynhurst, Suite H, Indianapolis, IN 46241. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 146697 (Sub-1TA), filed April 5, 1979. Applicant: JAMES V. DOUGHERTY, McKinley Street, Box 406, Black River Falls, WI 54615. Representative: James A. Spiegel, 6425 Odana Road, Madison, WI 53719. Contract carrier; irregular routes; (1) *Refuse compacting units, and* (2) *materials, equipment, and supplies used in the manufacture or fabrication of metal and sheet metal products* (1) from Black River Falls, WI to Winamac, IN and (2) from points in the Chicago, IL Commercial Zone to Black River Falls, WI, restricted to service performed under a continuing contract(s) with D & S Mfg. Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): D & S Mfg. Co., Inc., McKinley Street, Black River Falls, WI 54615. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 147077 (Sub-5TA), filed August 6, 1979. Applicant: Q. T. TUGGLE, d.b.a. CALIFORNIA WESTERN, 3325 Linden Avenue, Long Beach, CA 90807. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010. *Contract:* Irregular; *(1) Steel pipe, coated or wrapped, and (2) Welded fittings when transported in mixed loads with (1) above,* from the facilities of Plexco located at Fontana, CA, and the facilities of Mobile Pipe Coaters located at Duarte, CA to Phoenix, Tucson, Yuma and Sahuarita, AZ and points within 25 miles of the city limits of said cities, under a continuing contract with M. E. Gray Co., of Bell Gardens, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): M. E. Gray Co., 5960 E. Shull, Bell Gardens, CA. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 147297 (Sub-1TA), filed May 31, 1979. Applicant: DA-RON CORP., 3305 North Broadway, Muncie, IN 47303. Representative: David Foreman (same address as applicant. *Machine compressed used clothing and rags* between the facilities of Goodwill Industries of American in the states of AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, MD, MA, MI, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, and WI, under contract with Goodwill Industries

of America at Washington, DC for 180 days. Supporting shipper(s): Goodwill Industries of America, 9200 Wisconsin Ave., Washington, DC 20014. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 147267 (Sub-2TA), filed July 19, 1979. Applicant: GORDON TRANSFER, INC., P.O. Box 2527, Gordon, NE 69343. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. Contract carrier, over irregular routes: *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* from points in IA, IL, MN, and NE to Oakland and San Francisco, CA for 180 days. Restricted to traffic handled under a continuing contract or contracts with Western Food Products, Inc. Supporting shipper(s): Western Food Products, Inc., 50 Overhill Road, Orinda, CA 94563. Send protests to: D/S Carroll Russell, ICC, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 147286 (Sub-1TA), filed May 18, 1979. Applicant: A & L TRUCKING, P.O. Box 103, Rocky Face, GA 30740. Representative: Eric Meierhoefer, Suite 423, 1511 "K" Street, Washington, DC 20005. *Carpets* from points in GA north of Interstate 20 to Birmingham, AL, Dayton, OH, Des Moines, IA, Loves Park, IL, Alexandria, VA and North Chelmsford, MA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 7 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 147396 (Sub-1TA), filed June 7, 1979. Applicant: CHARTER TOURS, INC., 402 East Drive, Princeton, WV 24740. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. *Passengers and their baggage, in Charter Service* between points in Bland, Buchanan, Giles, Tazewell, Wise and Wythe Counties, VA; and Greenbrier, Logan, McDowell, Mercer, Mingo, Monroe, Raleigh, Summers, & Wyoming Counties, WV, on the one hand, and on the other, points in the United States, except AK and HI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Valley Woman's Club, Route 6, Box 46, Princeton, WV 24740. Bluefield Shrine Club, 1229 Thompson, Bluefield, WV 24701. Beta Sigma Phi City Council, 116 Edgemont Drive, Princeton, WV. Mercer General Inc., Princeton, WV. Send protests to: I.C.C., Federal Reserve Bank Building, 101 N. 7th Street, Room 620, Philadelphia, PA 19106.

MC 147406 (Sub-1TA), filed June 12, 1979. Applicant: EUGENE L. CARELLI, Individual, d.b.a., C & C TOWING, 1739 Central Street, Denver, CO 80211. Representative: Winston A. Holland, 5672 Wadsworth Blvd., P.O. Box 1169, Arvada, CO 80002. *Damaged, disabled, replacement, repossessed, stolen and wrecked motor vehicles or trailers* between points in CO and the States of AZ, KS, NE, NM, SD, UT, and WY. (The above sought authority to not apply on operations between points within the States specified.) An underlying ETA seeks 90 days authority. Supporting shipper(s): 6 supporting shippers. Send protests to: Herbert C. Ruoff, District Supervisor, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 147407 (Sub-1TA), filed July 24, 1979. Applicant: R. SULLIVAN & SONS, INC., 4254 Northampton Drive, Winston-Salem, NC 27105. Representative: Rudolph Sullivan (same address as applicant). *Passengers with or without baggage on a charter basis* between NC, SC, VA, GA, FL, DC, and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are approximately 4 supporting shippers. Their statements may be examined at the office listed below or Headquarters. Send protests to: Sheila Reece, Transportation Assistant, 800 Briar Creek Rd., Rm. CC516, Charlotte, NC 28205.

MC 147417 (Sub-1TA), filed June 13, 1979. Applicant: NEALY ENTERPRISES OF MISSISSIPPI, INC., 4749½ Hwy. 80 W., P.O. Box 2474, Jackson, MS 39205. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Contract* carrier; Irrigular routes; *Automotive parts and accessories* from the facilities of NAPA Distribution Center at Jackson, MS to points in LA, for the account of NAPA Distribution Center, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Napa Distribution Center, 1570 W. Highland Drive, Jackson, MS 39204. Send protests to: Alan Tarrant, DS, ICC, Rm. 212, 145 E. Amite Building, Jackson, MS 39201.

MC 147456 (Sub-TA), filed May 22, 1979. Applicant: R. E. CHRISTIANSEN TRUCKING, INC., 4873 Wildwood Drive, North Bend, OR 97459. Representative: David C. White, 2400 S.W. Fourth Avenue, Portland, OR 97201. *Such commodities as are dealt in by farm supply stores,* between Tacoma, WA, on the one hand, and, on the other, Grants Pass, Junction City, Medford, Myrtle Point, Roseburg, and Tillamook, OR, restricted to shipments moving between the facilities of Western Farmers Association. Supporting shipper: Western Farmers Association, 201 Elliott Avenue W., Seattle, WA 98119. Send protests to: A. E. Odoms, D/S, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, OR 97204.

MC 147466 (Sub-TA), filed June 13, 1979. Applicant: CUSTOMER TRUCK SERVICE, 1945 Hilfiker Lane, Eureka, CA 95501. Representative: Mr. Nyle Henderson (same address as applicant). *Pallatized Salted Butter* in dry vans between Fernbridge, CA (Humboldt Creamery Association) and Northwestern Pacific Railroad siding, Willits, CA on Highway 101 in interstate commerce, for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper: Humboldt Creamery Association, Fernbridge, CA 95540. Send protests to: A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 147476 (Sub-TA), filed May 24, 1979. Applicant: FRED AUSTIN MOVING AND TRUCKING, INC., 4737 West Washington Blvd., P.O. Box 44105, Chicago, IL 60644. Representative: Robert J. Gill, 29 South LaSalle Street, Suite 740, Chicago, IL 60603. *Animal casings,* between Chicago, IL on the one hand, and, on the other, Algoona, IA; Chesaning, Detroit, Flint, Grand Rapids, Hamtramck, and Holland, MI; Austin, MN; Cleveland, OH; Kenosha and Milwaukee, WI for 180 days. Supporting shipper: Edward Wax Casing Co., Inc., 2708 Harrison Street, Chicago, IL. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 147477 (Sub-TA), filed June 13, 1979. Applicant: SOUTHEAST TRANSPORT CORPORATION, 401 Bryan Street, Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Sugar,* between Jacksonville, FL, on the one hand, and, on the other, Savannah, GA, having a prior or subsequent movement by water, for 180 days. Supporting shipper(s): Crowley Maritime Corporation, P.O. Box 2110, Jacksonville, FL 32203. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 147486 (Sub-TA), filed May 14, 1979. Applicant: BOARDWALK SHUTTLE SERVICES, INC., 133 New Street, Glenside, PA 19038. Representative: Michael J. Korolishin, 1260 Suburban Station Building, Phila.,

PA 19103. *Passengers and their baggage in special and charter operations, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof, and not including children under ten years of age who do not occupy a separate seat or seats,* between or near Philadelphia, PA and Atlantic City, NJ for 180 days. Supporting shipper(s): Philadelphia Chamber of Commerce, 1617 J.F.K. Blvd., Suite 1960, Philadelphia, PA 19103. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 147606 (Sub-1TA), filed June 28, 1979. Applicant: SOUTHERN ILLINOIS MATERIALS COMPANY, P.O. Box 1707, Mt. Vernon, IL 62864. Representative: Robert Lawley, 300 Reisch Bldg. Springfield, IL 62701. *Contract carrier:* irregular routes: *Crushed limestone, sand, gravel, crushed trap rock mineral filler and black-top mix,* for the account of Southern Illinois Asphalt Co., Inc., from points in Cape Girardeau, St. Genevieve, Perry, Madison, Iron and Jefferson Counties, MO to points in IL on and South of U.S. Highway No. 50, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Southern Illinois Asphalt Co., Inc., P.O. Box 1707, Mt. Vernon, IL 62864. Send protests to: David Hunt, TA, Rm. 1386, 219 S. Dearborn, Chicago, IL 60604.

MC 147786 (Sub-1TA), filed July 19, 1979. Applicant: BARTON TRANSFER & STORAGE COMPANY, 72 South Street, New Providence, NJ 07974. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Household goods between points in NJ, on the one hand and, on the other, points in the states of FL, GA, NC, SC, MD, VA, DE, NY, PA, CT, MA, RI, NH, VT, ME, IN, OH, IL, KY, WV, LA, DC, for 180 days. An underlying ETA seeds 90 days authority. Supporting shipper(s): Various household goods bookings. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 147787 (Sub-1TA), filed July 31, 1979. Applicant: SOUTHERN DRAYAGE, INC., P.O. Box 1983, Jackson, MS 39205. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Contract carrier:* irregular routes: *Household cleaning compounds* (except in bulk) from the facilities of Alco Chemical Products, Inc., at or near Brookhaven, MS to Philadelphia, PA and Camden, NJ and points in their commercial zones, for 180 days for the account of Alco Chemical Products, Inc., Brookhaven, MS 39601. Supporting shipper(s): Alco Chemical Products, Inc., Brookhaven, MS 39601. Send protests to: Alan Tarrant, D/S, ICC, Federal Building, Suite 1441, 100 W. Capitol St., Jackson, MS 39201.

MC 147807 (Sub-2TA) filed July 24, 1979. Applicant: TERESI TRUCKING, INC., 900½ Victor Road, Lodi, CA 95240. Representative: Eldon M. Johnson, PH: (415) 986-8696, 650 California Street, Suite 2808, San Francisco, CA 94108. *Steel articles* from Alameda and Oakland, CA to facilities of Stockton Steel Fabricators & Erectors, Inc., Stockton, CA, for 180 days. Restricted to shipments having prior movement by water. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stockton Steel Fabricators & Erectors, Inc., 3003 East Hammer Lane, Stockton, CA 95208. Send protests to: A. J. Rodriguez, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 147826 (Sub-1TA), filed July 30, 1979. Applicant: R. C. BARSTOW TRUCKING CO., INC., 102 Middle Street, Hadley, Massachusetts 01035. Representative: Norman C. Barstow, Sr., Same address. *Contract carrier:* irregular routes: *Paper and paper products and materials, equipment, and supplies used in the manufacture of paper and paper products,* between the facilities of Packaging Corporation of America at Northampton, MA and CT, ME, MD, NH, NJ, NY, PA, RI and VT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Packaging Corporation of America, 1603 Orrington Avenue, Evanston, IL 60204. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 147816 (Sub-1TA), filed July 25, 1979. Applicant: VALLEY TRAVEL CLUB, INC., 16927 Vanowen Street, Van Nuys, CA 91406. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. *Passengers and their baggage, in round-trip special or charter operations,* between points in Los Angeles County, CA and Las Vegas, NV, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): There are approximately five (5) supporting shippers. Their statements may be examined at Headquarters and the office listed below. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 147887 (Sub-TA), Applicant: K. M. COLLINS & CO., INC., 262 North Belt, Suite 210, Houston, TX 77060. Representative: S. G. Fritz (same as applicant). (1) *Drilling rigs* and *related parts* for drilling rigs and (2) *Equipment and materials* (except commodities in bulk) used in installation, manufacture and distribution of commodities in one (1) above between the facilities of Skytop Brewster Co. at Conroe, TX and points in AR, CO, KS, LA, NM, OK, TX, UT, and WY for 180 days. NOTE: APPLICANT proposes to interline at Harvey, LA, Salt Lake City, UT, Tulsa, OK, Lordsburg, NM. Supporting shipper(s): Skytop Brewster, 2501 N. Frazier, Conroe, TX 77301. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave. #8610, Houston, TX 77002.

MC 147897 (Sub-TA), filed July 23, 1979. Applicant: J. C. ROSS. d.b.a. ROSS TRUCKING COMPANY, Route 3, John Hall Road, Knoxville, TN 37920. Representative: John J. Duncan, Jr., Suite 350, City & County Bank, One Regency Square, Knoxville, TN 37915. (1) *Industrial and agricultural lime, limestone, and limestone products* from the facilities utilized by Tennessee Luttrel Lime Company and Luttrell Mining Company at or near Luttrell, TN to points in NC, SC, KY, OH, VA, GA, IN, AL, IL, and WV, and (2) *Industrial and agricultural lime* from the facilities utilized by Williams Lime Mfg Co., Inc. at or near Knoxville, TN to points in NC, SC, KY, OH, VA, GA, IN, AL, IL and WV, for 180 days. Supporting shipper(s): Tennessee Luttrell Lime Co., and Luttrell Mining Co., P.O. Box 11705, Knoxville, TN 37919. Send protests to: Williams Lime Mfg Co. Inc., P.O. Box 2286, Knoxville, TN 37901.

MC 147926 (Sub-TA), filed July 11, 1979. Applicant: DICKERHOFF TRUCKING, INC., P.O. Box 116, Mentone, IN 46539. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. *Animal and poultry feeder and ventilation equipment, and parts thereof,* from the plantsite facilities of C.T.B. Corporation at Milford, IN, Watkinsville, GA, and Decatur, AL, to points in AL*, AR, CT, DE, DC, FL, GA*, IL, IN, IA, KS, KY, LA, MD, ME, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, and WI for 180 days. *Shipper anticipates and supports interplantsite movements. Supporting shipper: C.T.B. Corporation, P.O. 518, State Road #15, Milford, IN 46542. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 147927 (Sub-TA), filed July 25, 1979. Applicant: GENE MYATT, an individual, d.b.a. GENE MYATT, Rt. 2, Lumberton, MS 39455. Representative: Kent F. Hudson, 202 Main St., Purvis, MS 39475. *Wood sugar molasses* from Laurel, MS to points in LA, AL, FL, TN, AR, MO, and GA, for 180 days. Supporting shipper(s): Masonite Corporation, Laurel, MS 39440. Send protests to: Alan C. Tarrant, D/S, ICC,

Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 148077 (Sub-TA), filed August 7, 1979. Applicant: JAMES L. KAMPSTRA d.b.a. KAMPSTRA TRUCKING (an individual), Route 2, Box 552, Aurora, OR 97002. Representative: James L. Kampstra, Route 2, Box 552, Aurora, OR 97002, 503–678–2462. Common, Regular Routes, *General commodities, except household goods as defined by the Commission, class A and B explosives, commodities in bulk, and those requiring special equipment* between Portland, Oregon, and its commercial zone and Corvallis, Oregon, and its commercial zone, serving the intermediate point of Albany, Oregon, and the off-route point of Lebanon, Oregon, and their commercial zones; in interstate or foreign commerce, for 180 days. Supporting shipper(s): Evans Products Company, 1115 S.E. Crystal Lake Dr., Corvallis OR, Freeze Dry Foods, Inc., Box 1048, Albany, OR 97321, Midwest Mfg. Inc., Rt. 2, Box 221, Corvallis, OR 97330, Smoke-Craft, P.O. Box 1029, Albany, OR 97321, Hewlett Packard, 1001 N.E. Circle Blvd, Corvallis, OR 97330, Crown Zellerbach Corp., 1500 S.W. First Avenue, Portland, Linn Gear Company, P.O. Box 397, Lebanon, OR 97355. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, OR 97204.

MC 146796 (Sub-2TA), filed August 3, 1979. Applicant: ROBERT HANSEN d.b.a. HANSEN TRUCKING, 121 W. 4th St., Danville, IL 61832. Representative: Same as applicant. *General commodities, having a prior or subsequent movement by rail in T.O.F.C. service,* between all points within a 100 mile radius of Danville, IL, on the one hand, and, on the other, points in IL and IN, and between points within a 100 mile radius of Danville, IL for 180 days. An underlying ETA seeks 90 days. Supporting shipper(s): Four supporting shippers. Send protests to: Dave Hunt, T/A, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

[Notice No. 168]

September 10, 1979.

MC 40088 (Sub-No. 2TA), filed May 28, 1979, published in the Federal Register July 26, 1979 and republished this issue. Applicant: L. L. BUCHANAN AND CO., INC., d.b.a. BUCHANAN AUTO FREIGHT, 115 W. D. Street, Yakima, WA 98902. Representative: L. K. Buchanan, 115 W. D. St., Yakima, WA 98902. General commodities, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Yakima, WA to points in Yakima, Kittitas, Renton and Franklin Counties, WA; restricted to traffic moving on freight forwarder bills of lading, for 180 days. An underlying ETA seeks 90 days operating authority. Supporting shipper(s): Coast Carloading Co., 1829 S. E. Center St., P.O. Box 42208, Portland, OR 97202. Superior Fast Freight 1830 S. E. Center, Portland, OR 97202. Send protests to: R. V. Dubay, 114 Pioneer Courthouse, Portland, OR 97204. The purpose of this republication is to reflect the scope of authority requested by the applicant.

MC 78228 (Sub-138TA), filed July 5, 1979. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Aluminum and aluminum articles* from the facilities of Kaiser Aluminum & Chemical Corporation, at or near Ravenswood, WV to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, LA, KY, ME, MD, MA, MI, MN, MS, MO, NJ, NH, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC. Supporting shipper(s): Kaiser Aluminum & Chemical Corp., P.O. Box 98, Ravenswood, WV 26164. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 117568 (Sub-19TA), filed June 1, 1979, published in the Federal Register July 26, 1979 and republished this issue. Applicant: WADE TRUCK LINES, INC., P.O. Box 156, Verona, MO 65769. Representative: Charles B. Fain, Fain & Fain, 333 Madison Street, Jefferson City, MO. 65101. *Contract, irregular, Fine chemicals, dental instruments and equipment, veterinary products, nutritional products for infant care, dental models for industrial purposes, beauty care instruments and products and commodities in bulk used in the manufacture of products by the food, drug, and agricultural industries,* from the plant sites of Syntex Corporation and its subsidiaries located in CO, MA, PA, IA, IL, NY, TN, AZ, and MO to points and places in the U.S. (Except AL and HI); and from points in ND, SD, NE, CO, OH, TX, KS, MN, IA, MO, AR, LA, WI, IL, MI, IN, MS, KY, TN, AL, FL, GA, SC, NC, VA, WV, RI, MA, NH, VT, ME and DC, to the plant sites in states named above for 180 days. An underlying ETA seeks 90 days authority. The purpose of this republication is to show the complete territorial description as previously omitted. Supporting shipper(s): Syntex Agribusiness, Inc., P.O. Box 1246, Springfield, MO 65805. Send protests to: DS John V. Barry, ICC, 600 Federal Bldg., 911 Walnut, Kansas City, MO 64106.

MC 147099 (Sub-2TA), filed May 24, 1979, published in the Federal Register August 6, 1979, and republished this issue. Applicant: RAUCH INDUSTRIES, INC., 6048 South York Rd., Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. *Contract* carrier-irregular routes: Department store merchandise from Charlotte and Hickory, NC to the facilities of M. O'Neil Company located at or near Magadore and Akron, OH under a continuing contract(s) with M. O'Neil Company for 180 days. An underlying ETA seeks 90 days authority. The purpose of this republication is to show the Charlotte, NC in lieu of Charleston, NC, as published in the Federal Register of August 6, 1979. Supporting shipper(s): M. O'Neil Company, 226 S. Main St., Akron, OH 44308. Send protests to: Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Bldg., Charlotte, NC 28205.

MC 147239 (Sub-1TA), filed May 21, 1979, published in the Federal Register July 26, 1979, and republished this issue. Applicant: O'DELL TRANSPORT, INC., P.O. Box 20705. Phoenix, AZ 85036. Representative: David Robinson, 3003 N. Central Ave., Suite 2101, Phoenix, AZ 85012. Contract, irregular, *sugar, molasses, syrup and animal bone charcoal not in bulk tank vehicles,* between CA, on the one hand, and, on the other hand, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MO, MT, NE, NV, NM, NC, OH, OK, OR, PA, SC, TN, TX, UT, WA, WI, and over the hwys of additional States WY, AL, MS, NY, CT, WV, VA, and MD, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper: C & H Sugar Co., 1 California St., San Francisco, CA 94106. Send protests to: Ronald R. Mau, District Supervisor, 2020 Federal Bldg., 230 N. 1st Ave., Phoenix, AZ 85025. The purpose of this republication is to Nebraska as a destination point as previously omitted.

By the Commission

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 79-28730 Filed 9-14-79; 8:45 am]

BILLING CODE 7035-01-M

# Sunshine Act Meetings

Federal Register
Vol. 44, No. 181
Monday, September 17, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS



1

**COUNCIL ON ENVIRONMENTAL QUALITY.**

**TIME AND DATE:** September 19, 1979, 11:30 a.m.

**PLACE:** Conference Room, 722 Jackson Place NW., Washington, D.C. 20006.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Old business.
2. Status of agency NEPA procedures.
3. Status of proposed revisions to National Contingency Plan.
4. Review of agency and Council procedures for complying with the Crude Oil Transportation Systems Act of 1978 (43 U.S.C. § 2001).

**CONTACT PERSON FOR MORE INFORMATION:** Foster Knight, 395-5750.

[S-1788-79 Filed 9-13-79; 12:22 pm]
BILLING CODE 3125-01-M

2

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 10:30 a.m., Thursday, September 13, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Closed Commission Meeting following the Open Meeting.

**MATTERS TO BE CONSIDERED:** Additional item to be considered.

*Agenda, Item No., and Subject*

Executive—1—Administrative and personnel Matter.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this item may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: September 13, 1979.

[S-1793-79 Filed 9-13-79; 3:02 pm]
BILLING CODE 6712-01-M

3

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 10:30 a.m., Thursday, September 13, 1979.

**PLACE:** Room 856, 1919 M Street, NW., Washington, D.C.

**STATUS:** Open Commission Meeting.

**CHANGES IN THE MEETING:** The following item has been deleted:

*Agenda, Item No., and Subject*

General—5—Amendment of the Ex parte Rules. Summary: The item involves application of the ex parte rules to contested application proceedings prior to designation for hearing where an opposition pleading is filed but does not qualify as a petition to deny.

Issued: September 13, 1979.

[S-1794-79 Filed 9-13-79; 3:02 pm]
BILLING CODE 6712-01-M

4

**FEDERAL COMMUNICATIONS COMMISSION**

**TIME AND DATE:** 9:30 a.m., Tuesday, September 18, 1979.

**PLACE:** Room 856, 1919 M Street, NW, Washington, D.C.

**STATUS:** Special Open Commission Meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

General—1—Title: Response to TI petition for rulemaking, RM-3288, and petition for waiver. Response to RCA petition RM-2876. Summary: The Commission is considering three actions which togeather form a response to the two TI petitions and the RCA petition. One action is a Report and Order in Docket 20780 establishing technical specifications and a certification requirement for computing equipment. The second action proposes to institute a rulemaking proceeding to revise the present Class I TV device rules to accommodate TI's stand alone modulator and changes sought by the RCA petition. The third action is an Order responding directly to TI's petition for waiver.

Common Carrier—1—Title: AT&T Rate Base Treatment of Claimed amounts for Investment in Affiliated Companies. (Docket No. 21244). Summary: As an outgrowth of Docket No. 19129, the last major AT&T rate investigation, the FCC issued a Notice of Proposed Rulemaking to examine AT&T's treatment for ratemaking purposes of its investment in the two affiliated companies, Bell Telephone Laboratories and 195 Broadway Corp. The FCC will consider whether AT&T's method of recovering a return on this investment is fair to ratepayers.

Common Carrier—2—Title: Final Decision and Order in Western Union Telegraph Company, Docket No. 20847. Summary: In 1976, Western Union increased its rates for its Series 1000 tariffs. These tariffs offer the public full-time, dedicated, low speed private line telegraph service. AT&T and the Department of Defense challenged these revisions and an investigation was held on their lawfulness. The Administrative Law Judge (ALJ) issued an Initial Decision, released July 18, 1978, concluding that the rates were not unlawful. Exceptions were filed to the ALJ's decision. The general issues to be considered here are whether Western Union met its initial burden of proof showing its revisions to be just and reasonable and whether the cost studies submitted by Western Union were so deficient as to require reversal of the ALJ's findings.

Common Carrier—3—Title: South Central Bell Telephone Company. Summary: The FCC is considering whether to designate for hearing the two applications of South Central Bell Telephone Company for construction permits to add improved mobile telephone service (IMTS) to Domestic Public Land Mobile Radio Telephone Service facilities in New Orleans and Houma, Louisiana. Any such hearing would examine whether South Central Bell has demonstrated public need for the proposed facilities and whether South Central Bell wrongfully refused to provide selector level interconnection to a competing carrier (anticompetitive practices issue and Communications Act Section 201 issue).

Common Carrier—4—Title: James R. Hendershot d/b/a MDS Systems Revisions to Tariff FCC No. 1, Transmittal Nos. 4 and 5. Summary: MDS Systems seeks to increase its prices for microvave distribution of television signals in the Anchorage, Alaska, metropolitan area. Visions, Ltd. MDS Systems' customer, objects to the price increase. It asks the Commission to investigate the new prices. The Commission must decide if Systems has raised questions that require further investigation and suspension.

Common Carrier—5—Title: AT&T's Request For Interim Relief In Its Rate of Return. (CC Docket No. 79-63). Summary: The FCC will consider AT&T's request in its petition March 8, 1979, that it be granted an immediate increase in its authorized rate of return to 10.36%.

Common Carrier—6—Title: In the Matter of American Telephone and Telegraph Company's Petition for Modification of Prescribed Rate of Return. (CC Docket No. 79–63). Summary: The Commission is to consider what appropriate action should be taken with respect to AT&T's request for an increase in its prescribed rate of return to a range of at least 11 to 12 percent.

Common Carrier—7—Title: In the Matter of AT&T's Earnings on Interstate and Foreign Services During 1978. (CC Docket No. 79–187). Summary: The FCC will consider what action, if any, should be taken with respect to any AT&T revenues which have exceeded its authorized rate of return.

Common Carrier—8—Title: In the Matter of American Telephone & Telegraph Co. Manual and Procedures for the Allocation of Costs. Summary: The Commission will consider AT&T's cost allocation manual implementing Docket No. 18128.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: September 18, 1979.

[S–1795–79 Filed 9–13–79; 3:02 pm].

BILLING CODE 6712–01–M

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5

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, September 20, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Special Open Commission Meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

Common Carrier—1—Title: Final Decision and Order in the Docket No. 20814 Investigation of AT&T's Multi-Schedule Private Line (MPL) Tariff. Summary: The FCC will decide whether AT&T has shown that MPL rates for voice grade private line channels are just, reasonable and non-discriminatory and whether AT&T has shown that its cost-allocation procedures comply with the FCC's *Docket No: 18128 Decision.* This decision follows an extensive evidentiary hearing and an initial decision by the Administrative Law Judge.

Common Carrier—2—Title: In the matter of American Telephone and Telegraph Company, Private Line Rate Structure and Volume Discount Practices. Summary: Consideration will be given to the practices of AT&T regarding the design of its tariff offerings. AT&T's use of rate elements and rate structures within its tariffs will be explored.

Common Carrier—3—Title: In the matter of policies and rules concerning rates for competitive carrier services and facilities authorizations. Summary: Consideration will be given to whether the Commission's rules should be relaxed for certain common carriers. Specifically, the Commission will address whether, and to what extent, the Commission should require carriers who offer services subject to competition to file cost support information with their tariff filings and to obtain Commission approval before undertaking certain activities.

Common Carrier—4—The Commission is considering the issuance of a Cable Landing License authorizing the landing and operation of a submarine cable (TAT–7) between Tuckerton, N.J. and Lands End, England issued in conjunction with the Commission's Section 214 authorization to construct, operate, activate and use a TAT–7 Cable System.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: September 13, 1979.

[S–1796–79 Filed 9–13–79; 3:02 pm]

BILLING CODE 6712–01–M

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6

**FEDERAL COMMUNICATIONS COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Thursday, September 20, 1979.

**PLACE:** Room 856, 1919 M Street NW., Washington, D.C.

**STATUS:** Special Closed Commission Meeting.

**MATTERS TO BE CONSIDERED:**

*Agenda, Item No., and Subject*

Common Carrier—1—Alleged Improper Activities by Southern Bell Telephone and Telegraph Co. and Southwestern Bell Telephone Co., CC Docket No. 78–242.

Common Carrier—2—American Telephone & Telegraph Co., for Authorization to Construct and Operate a Domestic Communications Satellite System, CC Docket No. 79–87.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 632–7260.

Issued: September 13, 1979.

[S–1779–79 Filed 9–13–79; 3:02 pm]

BILLING CODE 6712–01–M

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7

September 12, 1979.

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.**

**TIME AND DATE:** 10 a.m., September 14, 1979.

**PLACE:** Room 600, 1730 K Street NW., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will also consider and act upon the following:

3. Victor McCoy v. Cresent Coal Company, Docket No. PIKE 77–71 (Petition for Discretionary Review).

4. Magma Copper Company, Docket No. DENV 79–433–PM (Petition for Discretionary Review).

It was determined by a unimous vote of Commissioners that Commission business required that a meeting be held on these items and that no earlier announcement was possible.

**CONTACT PERONS FOR MORE INFO:** Jean Ellen, 202–653–5632.

[S–1791–79 Filed 9–13–79; 2:46 pm]

BILLING CODE 6820–12–M

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8

**NATIONAL CREDIT UNION ADMINISTRATION.**

Notice of previously held emergency meeting.

**TIME AND DATE:** 3:55 p.m., September 7, 1979.

**STATUS:** Open.

**BACKGROUND:** Public Law 95–630 established within the National Credit Union Administration a Central Liquidity Facility, a mixed-ownership government corporation, which becomes operational October 1, 1979. The agency has been in the process of negotiating three contracts for ADP services and software needed by the Facility before its opening date.

Public Law 95–630 also restructured the agency from management by a single administrator to management by a three-member Board, to become effective when the three members were sworn in.

The board was sworn in on Tuesday, September 4th. Their organizational meeting, which was announced in the Federal Register (44 FR 52444, Sept. 7, 1979), is to be held September 14, 1979. Staff felt that to wait until September 14 to consider these software and services contracts would delay the effective startup of the Central Liquidity Facility on October 1. Consequently, on recommendation from staff, the Board determined that its business required that a meeting be held with less than one week's advance notice to the public, and no earlier announcement of this meeting was possible.

**MATTERS WHICH WERE CONSIDERED:**

(1) Designation of Rosemary Brady to act as Secretary of the Board for this meeting

with the authority to sign the meeting notice on behalf of the Board.

(2) Limited delegation of authority to Leonard Lapidus until September 14, 1979, to negotiate and execute the following contracts:

Florida Software Services for Commercial Lending System; General Electric Information Services Company Agreement for Computer Services; and General Electric Information Services Company Agreement for Personnel Services.

for the Central Liquidity Facility on behalf of the National Credit Union Administration Board for initial organizational and operating expenses.

**CONTACT PERSON FOR MORE INFORMATION:** Rosemary Brady, Acting Secretary of the Board, telephone (202) 254–9800.

[S–1782–79 Filed 9–13–79; 2:46 pm]
BILLING CODE 7535–01–M

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9

**PAROLE COMMISSION:**

**TIME AND DATE:** Monday, October 1, 1979, starting at 1 p.m. and Tuesday, October 2, 1979, 9 a.m.–1 p.m.

**PLACE:** Conference Room No. 434, Dallas Hilton Hotel, Dallas, Texas.

**STATUS:** Closed, pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Appeals to the Commission of approximately 12 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. § 2.17 and appealed pursuant to 28 C.F.R. § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

**CONTACT PERSON FOR MORE INFORMATION:** A. Ronald Peterson, Analyst, (202) 724–3094, 320 First Street NW., Washington, D.C.

[S–1798–79 Filed 9–13–79; 3:02 pm]
BILLING CODE 4410–01–M

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10

**PAROLE COMMISSION.**

**TIME AND DATE:** Tuesday, October 2, 1979, 2 p.m.–5:30 p.m.

**PLACE:** Conference Room 434, Dallas Hilton Hotel, Dallas, Texas.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Review of the Commission's program to be presented at the Dallas sentencing institute on October 3–5, 1979.
2. Report of the Chairman on legislative activity affecting the Commission.

**CONTACT PERSON FOR MORE INFORMATION:** Billie Richards, 320 First Street NW., Washington, D.C. 20537, (202) 724–6304.

[S–1799–79 Filed 9–13–79; 3:02 pm]
BILLING CODE 4410–01–M

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11

**PAROLE COMMISSION.**

**TIME AND DATE:** Tuesday, August 21, 1979, starting at 1 p.m.

**PLACE:** Penn Center Inn, Room 919, 20th and Market Streets, Philadelphia, Pennsylvania.

**STATUS:** Closed, pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE DISCUSSED:** Parole case transferred to the Commission from one of its regions. This case had been originally heard by an examiner panel.

The Commission determined pursuant to 5 U.S.C. § 552b(e)(1) and 28 C.F.R. § 16.204d that Commission business requires that this meeting be held on less than one week's notice to the public and that notice be given at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Henry J. Sadowski, Regional Counsel, United States Parole Commission, Scott Plaza II, 6th Fl., Industrial Highway, Tinicum Township, Philadelphia, Pennsylvania 19113, Phone: (215) 596–1868.

[S–1790–79 Filed 9–13–79; 2:46 pm]
BILLING CODE 4410–01–M

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12

**TENNESSEE VALLEY AUTHORITY** (Meeting No. 1227).

**TIME AND DATE:** 7 p.m., Thursday, September 20, 1979.

**PLACE:** Joseph B. Van Pelt Elementary School, Bristol, Virginia.

**STATUS:** Open.

**MATTERS FOR ACTION:**

Old Business

1. Req. No. 572867—Indefinite quantity term contract for carbon steel (general purpose), warehouse quantities, for any TVA project or warehouse.
2. New policy on disposal of certain TVA phosphate land holdings in Tennessee.
3. Nuclear plant siting policy.
4. Rule and regulation reaffirming sale and distribution of power within the boundary prescribed by Section 15d(a) of the TVA Act.

New Business

*Purchase Awards*

1. Amendment to indefinite quantity term contract No. 77X70–547378–1 with Belcher of Tennessee, Inc., for diesel fuel for Colbert, Johnsonville, Allen, and Cumberland Steam Plants; Hartsville Nuclear Plant; and Yellow Creek Port, near Iuka, Mississippi.
2. Req. No. 825994—Indefinite quantity term contract for channels, fittings, and accessories for various TVA nuclear Plants.
3. Req. No. 825328—Air handling units for Yellow Creek Nuclear Plant.
4. Req. No. 164512—Nuclear insurance for Watts Bar Nuclear Plant.
5. Rejection of bids received in response to Invitation No. 108204 (Reissue) for construction of a 24.4 mile section of the West Point-Miller 500-kV Transmission Line.

*Project Authorizations*

1. No. 3461—Modify urea unit at Muscle Shoals, Alabama.
2. No. 3464—Falling-curtain process for granulation of urea and other fertilizers.
3. No. 3471—Modify boiler startup systems—Paradise Steam Plant Units 1 and 2.
4. No. 3473—Construct the Montgomery Tennessee, 500-kV Substation and transmission line connections.
5. No. 3168.1—Amendment to project authorization for 200-MW atmospheric fluidized bed combustion demonstration plant to provide full approval for design, construction, and operation of a 20-MW pilot plant.
6. No. 3311.1—Amendment to project authorization for wood pyrolysis demonstration at Maryville College to correct fabrication and design defects and provide for equipment not covered in original project authorization.

*Power Items*

1. Lease, sale, and amendatory agreement with the Sequachee Valley Electric Cooperative covering arrangements for 161-kV delivery at TVA's Pikeville 69-kV Substation.
2. Letter agreement with Central Electric Power Association covering change in arrangements for power supply to proposed Kosciusko substation in Attala County, Mississippi.
3. Determination on service practice standards under Public Utility Regulatory Policies Act (PURPA).

*Real Property Transactions*

1. Filing of condemnation suits.
2. Contract with State of Mississippi relating to highway adjustments in the Yellow Creek Nuclear Plant area.
3. Sale of permanent highway easement affecting approximately 6.98 acres of TVA's Moulton 161-kV Substation property in Lawrence County, Alabama.

*Unclassified*

1. Settlement of damage claim by TVA against Vertex Systems, Inc., for breach of contract for equipment for Bellefonte Nuclear Plant and dam gates for Columbia Dam.[1]
2. Settlement of litigation brought by Coal Service Corporation against TVA and the South Hopkins Coal Company, Inc., pending in U.S. District Court for Western District of Kentucky.[1]
3. Waiver of public notice requirement associated with certain pending applications for Section 26a permits for construction of

[1] These items were approved by individual Board members. This would give formal ratification to the Board's action.

facilities in the Tennessee River and its tributaries.

4. Payments to states and counties in lieu of taxes for fiscal year ending September 30, 1979, as provided under Section 13 of the TVA Act, as amended.

5. Payment from power proceeds for fiscal year 1979 to the Treasury of the United States.

**DATED:** September 13, 1979.

**CONTACT PERSON FOR MORE INFORMATION:** Lee C. Sheppeard, Acting Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

[S–1789–79 Filed 9–13–79; 2:46 pm]

BILLING CODE 8120–01–M

Federal Register

Monday
September 17, 1979

Part II

# Department of Health, Education, and Welfare

Office of Education

Guaranteed Student Loan Program

**DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

**Office of Education**

**45 CFR Part 177**

## Guaranteed Student Loan Program

**AGENCY:** Office of Education, HEW.

**ACTION:** Final regulations.

**SUMMARY:** The Commissioner is issuing final regulations to implement changes in the operation of the Guaranteed Student Loan Program (GSLP), authorized by the applicable provisions of the Education Amendments of 1976, the Technical and Miscellaneous Amendments of 1977, the Middle Income Student Assistance Act of 1978, the Higher Education Technical Amendments of 1979, and the Amendments to the Bankruptcy Reform Act of 1978. The regulations also contain various policy changes that do not result from the statutory changes.

The regulations constitute a comprehensive package of program requirements based on the April 5, 1978 notice of proposed rulemaking (NPRM) and the July 19, 1978 supplemental NPRM. The regulations apply to both the loan guarantee programs of State agencies and private nonprofit agencies and the direct Federal loan guarantee program known as the Federal Insured Student Loan Program (FISLP).

**EFFECTIVE DATE:** These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

When these regulations become effective, they will apply to all GSLP loans, including outstanding loans. However, they will not affect actions previously taken by lenders, schools, students, or guarantee agencies. For example:

1. New disbursement requirements for FISLP loans apply only to loans not yet disbursed.

2. New collection requirements for FISLP loans apply only to loans for which the borrower is not delinquent in making a payment as of the regulations' effective date.

3. New requirements affecting the filing of FISLP default and other claims apply only to loans for which claims have not yet been filed. The 60- or 90-day limits for filing FISLP claims begin to run on the effective date of these regulations for FISLP loans for which claims may then be filed.

4. Non-statutory changes in the terms of loans do not apply to outstanding loans unless the lender and borrower agree in writing to revise the applicable provisions of the promissory note.

All statutory changes affecting the GSLP took effect on the date specified by law, even though they are included in these regulations.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jane Bryson, Acting Chief, Guaranteed Student Loan Policy Section, Division of Policy and Program Development, Room 4007, ROB-3, 400 Maryland Avenue, S.W., Washington, D.C. 20202, (202) 245-2475.

**SUPPLEMENTARY INFORMATION:**

### A. Overview of the Program and the Regulations

The Guaranteed Student Loan Program (GSLP) was established in 1965 under Title IV, Part B of the Higher Education Act. The GSLP's chief objective is to provide a program of student loan insurance for students attending eligible postsecondary schools. An important feature of the program is that the Federal government pays the interest on a GSLP loan for any qualified student during the student's in-school, grace and deferment periods. During all other periods the student is responsible for paying the 7 percent interest.

State or private nonprofit guarantee agencies operate programs for insuring loans made to students by eligible lenders in 38 States. In these States, the Federal government participates in the agency's own effort to provide a means of helping students to obtain loans by reinsuring the loans insured by the guarantee agency. In the remaining States, and to a limited extent in guarantee agency States, the Federal government operates the FISLP through the cooperation of eligible lenders.

Since its inception the GSLP has insured 11 million loans—worth $13.7 billion—to more than 6 million students. In FY 1978 more than 1.1 million loans, worth over $1.9 billion, were approved under the GSLP. An appropriation in excess of $960 million is being requested for the program for FY 80. Nearly 75% of this amount is to pay interest subsidies and special allowance on outstanding loans.

On April 5, 1978 (43 FR 14376), and NPRM was published in the Federal Register to solicit comments on these regulations. In addition, public hearings were held in 7 cities across the country during May 1978.

On July 19, 1978 (43 FR 31104), a supplemental NPRM was published in the Federal Register covering the proposed GSLP refund policy that had been omitted from the April 5 NPRM. The comment period of the July 19 NPRM was extended (43 FR 41056, September 14, 1978), thus allowing a total of 90 days for comment on the proposed refund policy.

These final regulations supersede all previous regulations that have been published in the Federal Register pertaining to 45 CFR Part 177, the Guaranteed Student Loan Program. Applicable provisions of recent legislation have been incorporated. In addition, various policy changes that do not result from the statutory changes have been included. These policy changes address certain problems in program operation that are not addressed in the existing regulations.

In addition to incorporating the applicable provisions of the new statutes, the Commissioner set several other goals in preparing these final regulations. These goals include:

(a) Preparing a single, complete set of regulations which could be easily understood;

(b) Standardizing, to the extent possible, definitions and requirements with those used for the other Title IV, Higher Education Act programs; and

(c) Avoiding overregulation.

To meet these goals the wording has been simplified, the numbering has been changed, and, in certain instances, provisions have been either rearranged in a more logical fashion or dropped entirely. Also, in the attempt to make the regulation easier to read, some of the longer sections have been divided.

In line with the Commissioner's goals, an attempt was made to standardize many of the definitions used in the GSLP with those used for the other title IV programs. The goal has not been fully met. Therefore, the Commissioner plans to issue a joint program NPRM in the near future directed at standardization of terms and definitions.

Numerous comments were received in response to the two NPRMs from schools, lenders, guarantee agencies, student organizations and professional groups, as well as from individual citizens. In total there were more than 230 individual letters. The July 19 supplemental NPRM on the refund policy drew 95 of these comments.

The majority of the comments suggested ways for improving the clarity of the proposed regulations. Many of these comments have been addressed through the new simplified style used in

preparing these regulations. Also, in many cases, additional language or an example has been added to help clarify the meaning of certain provisions.

Some comments dealt with aspects or potential effects of the Act itself that are beyond the scope of these regulations. There were also comments or suggestions that could not be used in revising the regulations but that will be considered in future proposed regulations or in the reauthorization proposal for the GSLP when it is submitted to the Congress.

A summary of these comments and the Commissioner's responses to them is included as an appendix to these regulations. The comments and responses appear in the numerical sequence of the regulations and are identified with the section number and the title of the section, using the new numbering system. A very brief summary of the major changes incorporated in these regulations is contained in this section of the preamble. For a more detailed explanation of the changes and the reasons for them, the reader should look at the comments and responses in Appendix A.

B. Important Statutory Changes

The Education Amendments of 1976 (Pub. L. 94-482) brought numerous significant changes to the GSLP. The specific changes that were made in these regulations to implement the provisions of the 1976 Amendments are discussed in detail in the April 5, 1978 NPRM.

The Middle Income Student Assistance Act (Pub. L. 95-566), enacted on November 1, 1978, significantly changed the program by providing that any student receiving a GSLP loan would be eligible for the Federal interest benefits during that student's in-school, grace, and deferment periods regardless of family income. The law had previously required that to qualify automatically for these benefits without a needs test, a student's adjusted family income be less than $25,000.

All provisions covering income requirements and the needs test have been removed from the final regulations, except in situations in which it is necessary to establish requirements for loans disbursed prior to November 1, 1978.

In addition, Pub. L. 95-566 established another category of deferment for disabled students in approved rehabilitation training programs.

There have been no proposed rules issued thus far on changes in the regulations that result from the Middle Income Student Assistance Act. The Commissioner considers those provisions of the law related to income requirements to be technical and self-implementing. The Commissioner, however, will establish criteria at a later date to qualify rehabilitation training programs for disabled individuals in order to fully implement the new deferment category. The Commissioner would appreciate receiving comments concerning the kinds of programs to which the new rehabilitation training program deferment should apply.

C. Summary of Major Issues

Although questions and comments were received on almost every section of the proposed regulations, there were 9 issues that drew the most comment and criticism. The following paragraphs provide a brief summary of how these issues have been addressed in the final regulations. A more detailed discussion of how the final regulations have or have not been changed from the NPRM in regard to these issues is contained in Appendix A—Summary of Comments and Responses.

1. *Refund Policy.* The majority of comments received from schools were critical of the inclusion of any criteria for determining the fairness or equity of school refund policies. In general, these commenters believed that the Office of Education should not regulate in this area but should allow the educational community to regulate itself.

A refund policy applicable to GSLP participating schools was first included in GSLP regulations in 1975. The statutory authority for those regulations, as well as for the regulations that are now being published as final, is found in two sections of the law, 20 U.S.C. 1082 and 20 U.S.C. 1088f-1. A detailed discussion of these sections of the law is contained in Appendix A.

The need for regulations setting minimum standards for school refund policies clearly exists as evidenced by the continued student complaints about unfair treatment by schools, the lack of clearly stated refund policies as uncovered by a recent Office of Education study, and the expressed need for government action as demonstrated by the recent action of the Federal Trade Commission (FTC) in setting even more stringent requirements than those contained in these regulations. The FTC requirements will become effective on January 1, 1980. These final regulations are more liberal in their treatment of schools than requirements in regard to refund that have been made in the past. There is no additional burden placed on schools by these requirements. All GSLP participating schools should already be in compliance with these requirements, since the basic requirements concerning refunds have been in effect since 1975.

The Office of Education is working with various educational associations in an effort to encourage those organizations to develop a way to regulate themselves. When the educational community has adopted refund policies or viable standards for refund policies, the Commissioner will review the need to continue to regulate.

The refund policy criteria contained in these regulations differ somewhat from the proposed requirements. Modifications have been made in the criteria for the maximum amount that can be considered non-refundable by a school. Also, modifications have been made to the provisions governing leaves of absences, now covered in § 177.609

2. *Deletion of the 60-day Notification Requirement for Schools.* The proposed regulations required a school to notify a lender within 60 days after any change in a student's enrollment status (e.g., failure to enroll on a half-time basis) that would trigger the beginning of the grace period. This requirement was included in the proposed regulations under the new authority given the Commissioner by the 1976 Amendments. Many commenters, however, criticized the notification requirements as unduly burdensome in light of current requirements for the Student Confirmation Report (SCR) used by the Federal government and guarantee agencies. The requirement that a school must notify a lender of a change in a student's enrollment status within 60 days has been deleted from the final regulations. The Commissioner is not including this requirement at this time because of the expected improvement in the SCR. Schools will now receive a streamlined Federal version of the SCR containing only information about students who have received loans under the FISLP and a few guarantee agency programs. The majority of guarantee agencies will obtain information from schools about students who have received loans under their guarantee agency programs through their own guarantee agency SCRs.

3. *Disability Determination.* The method currently used to determine whether a borrower is totally and permanently disabled for purposes of filing a disability claim has been cited as slow and inefficient. This procedure involves submission of detailed medical reports by the borrower to a lender and an additional review of the medical evidence by a physician under contract to the Bureau of Student Financial Assistance. As of the effective date of these regulations, determination of a

borrower's total and permanent disability will be made by the borrower's attending physician, who must be a licensed doctor of medicine or osteopathy.

4. *Multiple Disbursements by Lenders.* The final regulations contain new provisions authorized by the 1976 Amendments allowing payment of interest benefits and special allowance on approved multiple disbursement loans. The provisions have been liberalized from those in the NPRM in order to permit smaller volume financial institutions to qualify for the additional payments under this provision.

5. *Requirements for Legend on Loan Check.* The requirement that a loan check carry the legend "GSLP—Payee Endorsement Required" has not been included in the final regulations. Many objections were received about the proposed requirement from lending institutions, especially those that thought the requirement would be burdensome for lenders that use computer-printed checks. The regulations still require, however, that a student must endorse the check or that the check be deposited in the student's account.

6. *Conditions for Receiving Federal Advances for Reserve Funds.* Under the final regulations to receive a Federal advance for its reserve fund, a guarantee agency must demonstrate to the Commissioner that it needs the advance. The agency must show that it will be unable to assure its lenders that it could guarantee all loans the lenders intend to make within the next two years. A new or re-established guarantee agency may receive advances for two years without meeting this requirement.

7. *Due Diligence for Guarantee Agencies.* Guarantee agencies were strongly opposed to the provisions in the proposed regulations requiring them either to adopt the FISLP standards for due diligence in making, servicing and collecting loans or to adopt "comparable" standards. The final regulations require that a guarantee agency establish and disseminate standards of due diligence that are subject to the Commissioner's approval. The standards need not be identical with, or comparable to, the FISLP standards.

8. *Deletion of Borrower Interview Requirement.* Under the final regulations, an FISLP lender will not be required to conduct a personal interview with all borrowers. However, the Commissioner urges lenders to make every effort to interview borrowers to eliminate any confusion over the terms of the loans.

9. *Deadline Dates for Filing Claims.* The proposed deadlines for filing FISLP claims have been retained. A death, disability or bankruptcy claim must be filed with the Commissioner within 60 days after a lender determines the existence of a condition justifying that claim. A default claim must be submitted within 90 days of default.

(Catalogue of Federal Domestic Assistance No. 13.460, Guaranteed Student Loan Program.)

Dated: June 15, 1979.

Ernest L. Boyer,

*U.S. Commissioner of Education.*

Dated: August 28, 1979.

Patricia Roberts Harris,

*Secretary of Health, Education, and Welfare.*

Part 177 of Title 45 of the Code of Federal Regulations is amended to read as follows:

## PART 177—GUARANTEED STUDENT LOAN PROGRAM

### Subpart A—Purpose and Scope



### Subpart B—General Provisions



### Subpart C—Federal Payments of Interest and Special Allowance



### Subpart D—Guarantee Agency Programs



### Subpart E—Federal Insured Student Loan Program



### Subpart F—Requirements, Standards, and Payments for Participating Schools



### Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Insured Student Loan Program

Authority: Title IV, Part B, of the Higher Education Act of 1965, as amended (20 U.S.C. 1071–1087–4), unless otherwise noted.

## Subpart A—Purpose and Scope

### § 177.100 The Guaranteed Student Loan Program.

(a) The Guaranteed Student Loan Program (GSLP) makes low interest loans available to students to pay for their costs of attending postsecondary schools. Lenders loan their own funds, and the Federal Government or a guarantee agency insures against loss. The program has two parts: guarantee agency programs and the Federal Insured Student Loan Program (FISLP).

(1) State agencies or private nonprofit agencies guarantee loans and are reimbursed by the Commissioner for part or all of the insurance claims they pay to lenders. Guarantee agency programs must meet certain Federal requirements, but there may be considerable variation among programs in such areas as loan maximums and student eligibility.

(2) The FISLP operates in States not served by guarantee agencies and in certain prescribed circumstances in which a guarantee agency program does not serve all eligible students in a State. The Commissioner directly insures lenders against losses on FISLP loans.

(b) *Participation in the GSLP.* (1) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State agencies may be lenders. The Student Loan Marketing Association and some State agencies purchase and hold loans and function as secondary markets.

(2) Most colleges, universities, and graduate and professional schools and many vocational, technical, and correspondence schools are eligible to participate as educational institutions.

(3) Students who meet certain requirements, including enrollment at a participating school, may borrow. Information for students about the GSLP is available on request from the U.S. Office of Education.

(4) All lenders, schools, and students must meet certain requirements in order to participate in the GSLP. These regulations contain all the eligibility requirements for the FISLP and Federal eligibility requirements for participation in guarantee agency programs. Each guarantee agency may establish additional requirements within these Federal limits.

(c) *Repayment.* The student who borrows under the GSLP is obligated to repay the lender the full amount borrowed, plus interest. Generally the Commissioner pays the interest while the student is in school and during certain other periods. The student pays the interest during the time he or she is repaying the loan. When a student leaves school or is enrolled less than half-time, a grace period begins. After the grace period, which may last from 9 to 12 months, the student generally begins repayment. In some cases repayment may be deferred for a time, but the student still is responsible for repaying the entire loan amount plus interest. The student's obligation to repay is cancelled only if the student dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(d) *Default.* If a student defaults on a loan, the Commissioner or the guarantee agency pays the lender the amount of its loss. The student then owes the debt to the Commissioner or the guarantee agency. The Commissioner or the guarantee agency actively attempts to collect the debt.

(20 U.S.C. 1071 to 1087–4.)

### § 177.101 Guarantee agency programs.

(a) The Commissioner pays Federal interest benefits and special allowance to lenders on guarantee agency program loans. The Commissioner also pays a GSLP borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy.

(b) The Commissioner pays 80 percent of a guarantee agency's default losses under a reinsurance agreement. If the guarantee agency meets additional requirements, the Commissioner pays up to 100 percent of the agency's default losses, depending on its default experience.

(c) The Commissioner encourages State agencies and private nonprofit agencies to establish adequate loan insurance programs. Federal loan advances are available to help start or strengthen an agency's reserve fund, which backs its loan guarantees. Additional Federal advances are available to help pay insurance claims. Administrative cost allowances are also available to the agencies.

(d) To operate as a guarantee agency under the GSLP and to qualify itself and its lenders for these benefits, an agency's program must meet the requirements under subparts B, C, D, and F.

(20 U.S.C. 1071, 1072, 1078–1, 1082, 1087, 1087–1.)

### § 177.102 Federal Insured Student Loan Program (FISLP).

(a) *Where does the FISLP operate?* The specific conditions under which the FISLP may operate in a State are given in § 177.500. In general, the FISLP is available—

(1) To all lenders in a State if there is no guarantee agency program; and

(2) To specific students and lenders who do not have reasonable access to the guarantee agency program operating in their State.

(b) *Payments to lenders.* Lenders qualify for the payment of Federal interest benefits and special allowance on FISLP loans. The Commissioner pays a borrower's loan obligation if the borrower dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy. The Commissioner also pays the lender's insurance claim if the borrower defaults.

(c) To qualify for Federal insurance and for interest and special allowance benefits, the lender must meet certain requirements established by law and these regulations.

(20 U.S.C. 1071 to 1087–4.)

### § 177.103 Applicability of subparts of this regulation.

Subpart B contains general provisions that are applicable to all GSLP participants. In addition, guarantee agency programs are subject to subparts C, D, and F, and the FISLP is subject to subparts C, E, F, and G. Schools are specifically addressed in subpart F.

(20 U.S.C. 1071 to 1087–4.)

### § 177.104 Prohibitions against discrimination.

This program is subject to the following statutes and regulations:

| Subject | Statute | Regulation |
|---|---|---|
| Discrimination on the basis of race, color or national origin. | Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4). | 45 CFR Part 80 |
| Discrimination on the basis of sex | Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683). | 45 CFR Part 86 |
| Discrimination on the basis of handicap | Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). | 45 CFR Part 84 |
| Discrimination on the basis of age | The Age Discrimination Act (42 U.S.C. 6101 et seq.). | 45 CFR Part 90 |
| Discrimination in lending | The Equal Credit Opportunity Act, as amended (15 U.S.C. § 1691 et seq.). | 12 CFR Part 202 |

(20 U.S.C. 1221c–3(a)(1))

## Subpart B—General Provisions

### § 177.200 General definitions.

*Academic year:* (a) A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at a school using credit hours; or

(b) At least 900 clock hours of training for a program at a school using clock hours; or

(c) Eighteen months for a correspondence program.

*Act:* Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 *et seq.*).

*Anticipated graduation date:* The date indicated by the school, at the time the student applies for a GSLP loan, as the date on which he or she will graduate from that school.

*Clock hour:* A period of time that is the equivalent of—

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

*Commercial lender:* A commercial bank, savings and loan association, credit union, or mutual savings bank.

*Commissioner:* The U.S. Commissioner of Education or an official or employee of the Office of Education to whom the Commissioner has delegated authority.

*Default:* The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Commissioner or the pertinent guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(a) 120 days for a loan repayable in monthly installments; or

(b) 180 days for a loan repayable in less frequent installments.

*Disbursement:* The transfer by a lender of funds to a borrower by means of issuing a check or draft payable to the order and requiring the personal endorsement, of the borrower.

*Due diligence:* The utilization by a lender, in the making, servicing and collection of GSLP loans, of practices at least as extensive and forceful as those generally practiced by financial institutions for consumer loans. The procedures for establishing due diligence under the FISLP are described in §§ 177.509, 177.510, and 177.511. The procedures for establishing due diligence under a guarantee agency program are set forth by the guarantee agency.

*Enrolled:* The status of a student who—

(a) Has completed the registration requirements at the school he or she is attending and has commenced the attendance period; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

*Estimated cost of attendance:* (a) Except as provided in paragraph (b) of this definition, the tuition and fees applicable to a student plus the school's estimate of other expenses reasonably related to attendance at that school, for the period for which the loan is sought. These costs include, but are not limited to, reasonable transportation and commuting costs, and costs for room, board, books, and supplies.

(b) For a student enrolled in a correspondence study program, only the contract price of the program. However, costs described in paragraph (a) of this definition that are incurred by the student for fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

*Estimated financial assistance:* For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded in Federal, State, or privately supported scholarship, grant, work, or loan programs. The following may not be considered financial assistance:

(a) Veterans' benefits.

(b) Students' benefits under Social Security.

(c) Resources or financial support from the student or the student's family.

*Full-time student:* (a) A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school, under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work experience, research, or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(b) A student enrolled in a vocational school (other than a correspondence school) who is carrying a workload of not less than 24 clock hours per week or 12 semester or quarter hours of instruction, or its equivalent.

*Grace period.* (a) A 9- to 12-month period before the borrower enters the repayment period. Unless a student is enrolled in a correspondence study program, the grace period begins on the day the student ceases to be at least a half-time student at a participating school. The length of the grace period is determined by the lender for loans made under the FISLP and by the pertinent guarantee agency for loans insured under a guarantee agency program. The grace period for a student enrolled in a correspondence study program begins on the date specified in § 177.401(b)(8)(ii) or § 177.507(a)(2).

(b) If a borrower returns to or enrolls at a participating school on at least a half-time basis, except as limited by §§ 177.401(b)(8)(ii) or 177.507(a)(2), prior to the expiration of the grace period, the full grace period begins again when he or she again ceases to be at least a half-time student at a participating school.

*Graduate or professional student:* A student who—

(a) Is pursuing a program, or has a bachelor's degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an institution of higher education; and

(b) Has successfully completed the equivalent of at least 3 years of full-time study at an institution of higher education either prior to entrance into the program or as part of the program itself.

*Guarantee agency:* A State or private nonprofit agency that administers a student loan insurance program.

*Half-time student:* An enrolled student who is carrying a half-time academic workload as determined by the school, and that amounts to at least one half the workload of a full-time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

*Holder:* An eligible lender in possession of a GSLP loan.

*Institution of higher education:* The requirements that a school must meet to satisfy the statutory definition of this term are set out in § 435(b) of the Act. The term includes public and private nonprofit degree granting institutions.

*Lender:* A lender, including a subsequent holder, that is—

(a) A National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union that—

(1) Is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which its principal place of operation is established; and

(2) Does not make or hold loans to students under the GSLP that total more than one-half of its consumer credit loan dollar volume, including home mortgages, unless it is a bank that is wholly owned by a State; or

(b) A pension fund as defined in the Employees Retirement Income Security Act; or

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a State; or

(d) In any State, a single agency of the State or a single private nonprofit agency designated by the State; or

(e) For purposes only of purchasing and holding loans made by other lenders under this program, the Student Loan Marketing Association or an agency of any State functioning as a secondary market; or

(f) A participating school that—

(1) Is not a correspondence school. An eligible school that offers both correspondence study and non-correspondence study programs may be an eligible lender only for students enrolled in the non-correspondence study programs; and

(2) Employs at least one full-time financial aid administrator.

*National of the United States:* (a) A citizen of the United States.

(b) A person who, though not a citizen of the United States, owes permanent allegiance to the United States.

*Nonprofit institution:* A school, agency, organization or institution owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

*Origination:* A special relationship between a school and a lender, in which the lender delegates to the school substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Commissioner determines that "origination" exists if—

(a) A school determines who will receive a loan and the amount of the loan; or

(b) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

*Participating school:* A school that has entered into an agreement with the Commissioner under § 177.600 to participate in the GSLP.

*School:* (a) An educational institution that is—

(1) An institution of higher education or a vocational school; or

(2) With respect to students who are nationals of the United States, a school outside the States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Commissioner for purposes of the GSLP.

(b) The term includes only those individual units or programs within a school that have been determined by the Commissioner to meet all the requirements for school eligibility.

(c) A school that employs or uses commissioned salespersons to promote the availability of the GSLP is not eligible to participate in the GSLP. For this purpose—

(1) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(2) "Promote the availability" means provide prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP loan. This term does not include providing general financial aid information to prospective or enrolled students.

*School lender:* Any participating school that has been approved as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

*State:* The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands and the government of the Northern Mariana Islands.

*State lender:* In any State, a State agency or a single, private nonprofit agency designated by the State that has been approval as a lender and has entered into a contract of insurance under the FISLP or a guarantee agency program.

*Totally and permanently disabled:* Unable to enage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death.

*Vocational school:* (a) A business or trade school, or technical institution, or other technical or vocational school that—

(1) Is in a State;

(2) Admits as a regular student only a person who—

(i) Has completed or left elementary or secondary school; and

(ii) Has demonstrated the ability to benefit from the training offered by the school under the provisions of § 177.603;

(3) Is legally authorized in each State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations; and

(ii) Provides no less than 300 clock hours of classroom instruction or its equivalent, or in the case of a program offered by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than 6 months; and

(iii) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for 2 years or has been specially determined by the Commissioner to be a school meeting the other requirements of this paragraph and to be eligible to participate in the GSLP; and

(5(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Commissioner for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Commissioner for this purpose; or

(iii) If the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit the type of school applying for eligibility, is approved by a State approval agency recognized by the Commissioner for this purpose; or

(iv) If the Commissioner determines that there is no nationally recognized accrediting agency or association or State approval agency qualified to accredit or approve the type of school applying for eligibility, is approved by the Commissioner's Advisory Committee on Accreditation and institutional Eligibility, in accordance with the standards of content, scope,

and quality that the Committee prescribes for that purpose. A school that has been approved by the Committee must, in order to remain an eligible school, become accredited within 3 years after the Commissioner has designated a nationally recognized accrediting or State approval agency for the type of school applying for eligibility.

(b) For the purpose of this definition, the Commissioner publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Commissioner has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1071–1087–4; 1088; 1088a; 1088f.)

**§ 177.201 Eligible student.**

(a) A student is eligible to receive a GSLP loan if the student—

(1) Is enrolled or accepted for enrollment in a participating school as at least a half-time student;

(i) If currently enrolled, the student must be in good standing and maintaining satisfactory progress as determined by the school;

(ii) If enrolled or accepted for enrollment in a vocational school, the student must be attending neither elementary nor secondary school and have shown ability to benefit from the training offered as required under § 177.603;

(iii) If enrolled or accepted for enrollment in a school outside the United States, the student must be a National of the United States; and

(2) Meets one of the following qualifications:

(i) Is a National of the United States.

(ii) Is a permanent resident of the United States.

(iii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education,

(i) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(ii) Has completed ground school training or is taking it concurrently with flight training;

(iii) Holds a private pilot's certificate or has sufficient flight hours to qualify for such certificate; and

(iv) Holds at least a Class-II medical certificate; and

(4) Except as provided in paragraph (c), is not in default on any National Defense or Direct Student Loan made by the school in which the student is enrolled or is accepted for enrollment; and

(5) Except as provided in paragraph (c), is not in default on any GSLP loan received for attendance at that school; and

(6) Except as provided in paragraph (d), does not owe a refund on a Basic Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at the school in which the student is enrolled or is accepted for enrollment.

(b) In determining whether a student is in default on a Guaranteed Student Loan, a school may rely on the student's written statement that he or she is not in default, unless the school has information to the contrary.

(c) A student who is in default on either a National Defense or Direct Student Loan or a Guaranteed Student Loan which was received for attendance at the same school may receive a Guaranteed Student Loan only under the following conditions:

(1) *Guaranteed Student Loan.* A student who is in default on a Guaranteed Student Loan may be eligible for a Guaranteed Student Loan if the commissioner or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense or Direct Student Loan.* A student who is in default on a National Defense or Direct Student Loan may be eligible for a Guaranteed Student Loan if the student has made arrangements, satisfactory to the school, to repay the loan.

(3) The Commissioner considers a National Defense or Direct Student Loan or Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

(d) A student who receives overpayment on a grant may receive a Guaranteed Student Loan under the following conditions:

(1) *Overpayment of a Basic Grant.* If the student is overpaid on a Basic Grant, that student may still be eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) The overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award period.

(2) *Overpayment of a Basic Grant due to school error.* If the student is overpaid as a result of school error, and the overpayment cannot be eliminated by adjusting subsequent Basic Grant payments in the award year, that student may still be considered eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) The student acknowledges in writing the amount of the Basic Grant overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Grant.* If the student is overpaid on a Supplemental Grant, that student may still be considered eligible for a Guaranteed Student Loan if—

(i) The student is otherwise eligible; and

(ii) An adjustment in subsequent financial aid payments (other than Basic Grants) eliminates the overpayment in the same award year in which it occurred.

(e) For purposes of this part—

(1) "Overpayment of a grant" means that a student received payment of a grant greater than the amount he or she was entitled to receive;

(2) "Basic Educational Opportunity Grant" means a grant authorized under Title IV–A–1 of the Higher Education Act of 1965;

(3) "National Defense Student Loan" means a loan made under Title II of the National Defense Education Act;

(4) "National Direct Student Loan" means a loan made under Title IV–E of the Higher Education Act of 1965;

(5) "State Student Incentive Grant" means a grant authorized under Title IV–A–3 of the Higher Education Act of 1965; and

(6) "Supplemental Grant" means a grant authorized under Title IV–A–2 of the Higher Education Act of 1965.

(20 U.S.C. 1077, 1078, 1085, 1088f.)

**§ 177.202 Permissible charges to students.**

(a) *Interest.*—(1) *Rate.* Exclusive of any insurance premium, the maximum rate of interest per year that may be charged a student on the unpaid principal balance of any GSLP loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest under circumstances described in paragraph (a)(3) of this section.

(2) *Method of calculation.* The lender shall calculate the interest from the date of disbursement of funds to the borrower. In calculating the interest, the lender may use either of the following methods:

(i) The "Approximate Time-Ordinary Interest" method; or

(ii) The "Exact Time-Exact Interest" method. Use of the "Banker's Rule"

("Exact Time-Ordinary Interest") is prohibited because this method results in an actual rate in excess of the allowable maximum rate of interest.

(3) *Capitalizing interest.*—(i) *General.* (A) "Capitalization" means increasing the unpaid principal of a loan through the addition of accrued interest to the previously unpaid principal balance. This paragraph defines those conditions under which capitalization on a FISLP loan is authorized, for purposes of the special allowance, Federal interest benefits, and a borrower's liability to a lender, and thus the amount of the lender's loss on an insurance claim.

(B) *Guarantee agency programs.* For loans insured under guarantee agency programs, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance as authorized by guarantee agency policy.

(ii) *Instances in which interest on a FISLP loan may be capitalized.* "Capitalization" may take place in the following instances:

(A) If interest has accrued during the in-school or grace periods for a nonsubsidized loan and capitalization is authorized by promissory note.

(B) If interest has accrued during a period of authorized deferment for a nonsubsidized loan.

(C) If interest has accrued during a period of forbearance for a loan.

(D) If interest has accrued during the period from the date the first repayment installment was required until it was made. In cases (A)–(C) a lender may add the accrued interest to the principal only on the date repayment of principal is required to begin or resume. In case (D) a lender may add the accrued interest to the principal only on the date repayment of principal actually begins.

(4) *Payment.* (i) *For subsidized loans.* A borrower is not liable for any portion of the interest on a loan that is payable by the Commissioner. The lender may not collect or attempt to collect that portion of the interest from the borrower.

(ii) *For nonsubsidized loans.* Interest is normally payable by the borrower in installments over the life of the loan. However, a lender may permit a borrower to postpone payment of interest at certain times as described in paragraph (a)(3)(ii) of this section or under a guarantee agency's policy. This accrued interest may either be paid when payment of principal begins or resumes or may be capitalized.

(b) *Insurance premium.* (1) The term "insurance premium" covers those charges made by the guarantee agency or the Commissioner to the lender to insure the lender of a GSLP loan against losses it may suffer if the borrower defaults or is adjudicated a bankrupt on his or her loan. The insurance premium may also be used by the guarantee agency or the Commissioner to cover costs incurred in the administration of the applicable loan insurance program. Premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose.

(2) Specific rules on insurance premiums, including the rate that may be charged the lender and passed on to the borrower, the method of calculation, refund requirements, etc., are contained in § 177.401(b)(12), for loans insured under State or private nonprofit loan insurance programs and § 177.506, for FISLP loans.

(c) *Late charges.* To the extent provided in the promissory note and permitted by State law, the lender may require that the borrower pay a late charge if the borrower fails to pay any or all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for authorized deferment of the payment. The late charge may not exceed 5 cents for each dollar of each installment due or $5 for each installment, whichever is less.

(d) *Collection charges.*—(1) *Permissible charges.* If provided in the note, the lender may also require that the borrower pay the lender for certain reasonable costs incurred by the lender or its agent in collecting any installment not paid when due. These costs may include attorney's fees, court costs, telegrams, and long-distance phone calls.

(2) *Non-permissible charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(i) Normal collection costs associated with preparing letters or notices or making personal contacts or local telephone calls.

(ii) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(iii) Loan origination fees.

(20 U.S.C. 1077, 1078, 1079, 1082, 1087–1.)

**§ 177.203 Affidavit.**

(a) No loan may be insured under this program unless the student has filed with the lender an affidavit. The student must state on the affidavit that the loan money will be used solely for costs of attendance at the school that student is or will be attending. The affidavit must—

(1) Be on a form provided or approved by the Commissioner;

(2) Be signed in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in recruiting students for enrollment at the school that the student intends to attend or is attending;

(3) Contain the signature of the notary or other person and, as applicable, a seal or stamp.

(b) The student must file the affidavit with the lender. The lender shall retain a copy of the affidavit as required in both the Federal and guarantee agency programs.

(20 U.S.C. 1082, 1088g.)

**§ 177.204 Treatment of refunds by lenders.**

(a) A lender shall treat a payment of a borrower's refund received from a school as a credit against the amount owed by the borrower on the GSLP loan.

(b) If a lender receives from a school a refund payment on a loan that is no longer held by that lender, the lender shall—

(1) Transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the payment's source; and

(2) Provide simultaneous written notice to the borrower that a payment has been transferred to the new holder.

(20 U.S.C. 1082.)

**§ 177.205 Prohibited transactions.**

(a)(1) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(i) Secure funds for making GSLP loans; or

(ii) Induce a lender to make loans to the students of a particular school or to any particular category of students.

(2) The following are examples of transactions which, if entered into for the purposes described in paragraph (a)(1) (i) or (ii) of this section, are prohibited:

(i) Cash payments by or on behalf of a school made to a lender or other party.

(ii) The maintaining of a compensating balance by or on behalf of a school with a lender.

(iii) Payments ostensibly made for other purposes.

(iv) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(v) Payment by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(vi) Purchase by or on behalf of a school of stock of the lender.

(b) Except when purchased by the Student Loan Marketing Association or an agency of any State functioning as a secondary market or in other circumstances approved by the Commissioner, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students at a school by a lender having common ownership with that school.

(c) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Commissioner, a school, or a lender with respect to a loan made to a student of a school having common ownership with the lender, may not pledge a loan made under the GSLP as security for any loan bearing aggregate interest and other charges in excess of the sum of 7 percent plus the rate of the then most recently prescribed special allowance under § 177.301.

(d) The prohibitions described in paragraphs (a), (b), and (c) of this section apply to any school or lender which would be a party to the proscribed transactions.

(e) The performance by a school of substantial functions or responsibilities normally performed by a lender which results in the school "originating" loans made by the lender is not a prohibited transaction.

(f) *Warranty.* (1) Nothing in this section shall preclude a buyer of loans made by a school from obtaining a warranty from the seller of those loans.

(2) The warranty may cover future reductions by the Commissioner or a guarantee agency in computing the amount of insurable loss, if any, on default claims filed on the loans where the reductions are attributable to an act or failure to act of the seller or previous holder.

(3) The warranty shall not cover matters for which a purchaser is charged with responsibility under this Part, such as due diligence in collecting loans.

(g) Section 440(d) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan insured under the GSLP shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(20 U.S.C. 1082)

## Subpart C—Federal Payments of Interest and Special Allowance

### § 177.300 Payment of interest benefits.

(a) *General.* The Commissioner pays to a GSLP lender a portion of the interest on a loan on behalf of an otherwise eligible borrower. This payment is known as interest benefits.

(b) *Borrower eligibility.* (1) To qualify for interest benefits the borrower shall submit an application to the lender containing a statement from the borrower's school that certifies—

(i) The borrower's estimated cost of attendance; and

(ii) The borrower's estimated financial assistance.

(2) For the GSLP borrower whose loan was disbursed prior to November 1, 1978, eligibility for interest benefits was established by the law in force at the time the loan was disbursed.

(c) *Lender's report.* To receive payment of interest benefits, a lender shall submit periodic reports to the Commissioner. These reports must be in a form prescribed by the Commissioner. Based on these reports, the Commissioner determines the amount of interest benefits to pay the lender.

(d) *What interest may be paid?* Payment of interest benefits on a loan is limited to—

(1) The interest on the unpaid principal that accrues prior to the beginning of the repayment period for the loan. The repayment period for a GSLP loan begins on the day after the last day of the grace period, whether or not that date is scheduled by the mutual agreement of the lender and the borrower and whether or not repayment actually begins at that time;

(2) The interest that accrues on the unpaid principal during any period in which the borrower has an authorized deferment; and

(3) For loans made or for which a binding commitment was made prior to December 15, 1968, an amount equivalent to 3 percent per year on the unpaid principal amount during the repayment period (excluding any deferment period).

(e) *What interest cannot be paid?* Payment of interest benefits *cannot* include—

(1) Any interest on interest added to principal, except in cases in which interest may be capitalized as provided for in § 177.202(a);

(2) Any interest for which the borrower is not otherwise liable; or

(3) Any interest that is paid on behalf of the borrower by a guarantee agency.

(f)(1) *Termination of interest benefits.* The Commissioner's obligation to pay interest benefits on a loan generally terminates upon either—

(i) Determination of the borrower's death;

(ii) Determination of the borrower's total and permanent disability;

(iii) Adjudication of the borrower as a bankrupt; or

(iv) Default by the borrower.

(2) If the borrower dies or becomes totally and permanently disabled prior to the beginning of the repayment period, the Commissioner's obligation to pay interest benefits on the loan terminates not later than 120 days following the lender's receipt of a request for a death or disability cancellation.

(20 U.S.C. 1078, 1082.)

### § 177.301 Special allowance payments to lenders.

(a) *General.* The Commissioner pays a special allowance to lenders on all GSLP loans. The special allowance is equal to a percentage of the average unpaid balance of principal, including capitalized interest, for all GSLP loans a lender has held during a 3-month period. The 3-month periods end (1) March 31; (2) June 30; (3) September 30; and (4) December 31 of each year.

(b) *Lender's reports.* To receive the special allowance payment, a lender shall submit periodic reports to the Commissioner stating the average unpaid balance of principal for all its GSLP loans. These reports must be in a form prescribed by the Commissioner.

(c) *How will the rate of special allowance be determined?*

(1) The percentage rate for the special allowance for a 3-month period is determined by—

(i) Subtracting 3.5 percent from the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the 3-month period;

(ii) Rounding the resulting percent upward to the nearest one-eighth of one percent; and

(iii) Dividing the resulting percent by 4.

(2) After the close of each 3-month period, the Commissioner announces the rate of the special allowance for that period.

(d) *How does the lender determine the average unpaid balance of principal?* (1) There are two methods a lender may use to determine the average unpaid balance of principal for purposes of the special allowance:

(i) *The average quarterly balance method.* Add the unpaid balance of principal of all loans outstanding on the first day of the 3-month period and the unpaid balance of principal of all loans

outstanding on the last day of the period and divide by 2.

(ii) *The average daily balance method.* Add the unpaid balance of principal of all loans outstanding on each day of the 3-month period and divide by the number of days in that period.

(2) The lender may not change its method of determining the average unpaid balance of principal without the prior approval of the Commissioner.

(3) For the purpose of this determination, a loan is considered outstanding if—

(i) The borrower has not repaid the loan;

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not been advised that the Commissioner or a guarantee agency has finally refused a claim for loss on the loan.

(20 U.S.C. 1082, 1087-1.)

**§ 177.302 Payment of interest benefits and special allowance to a lender that makes multiple installment loans.**

(a) *General.* The Commissioner pays a lender that meets special criteria interest benefits and special allowance on the entire approved amount of a GSLP loan, even though only a portion of the loan has actually been paid to a borrower. For purposes of this payment, the interest benefits and special allowance begin to accrue on the date of disbursement of the first installment of the loan.

(b) *Which lenders are eligible for these payments?* (1) A lender is eligible to receive the special interest and special allowance on a multiple installment loan if the lender—

(i) Is not a school or State agency;

(ii) Has made a binding commitment to make the entire amount of the loan; and

(iii) Is approved to receive these payments by the Commissioner.

(2) To be approved by the Commissioner, the lender must—

(i) Submit an application on a form provided or approved by the Commissioner;

(ii) Agree to disburse the loan in installments as prescribed in paragraph (c);

(iii) Have been making GSLP loans for at least six months;

(iv) Not have had its lending status limited, suspended, or terminated by the Commissioner or a guarantee agency during the three-year period prior to the date of its application; and

(v) Have made, or expect to make within a 12-month period, GSLP loans qualifying for interest benefits amounting to at least one-fourth of one percent of its total assets or $100,000, whichever is less. The 12-month period must include the date on which the lender makes application for approval.

(3) If the Commissioner determines that a lender that is making multiple installment loans under this section is not properly administering the disbursement of the loans, the Commissioner withdraws his or her approval for the lender to receive the special payments of interest benefits and special allowance.

(c) *Multiple installment disbursement procedures.* A lender shall disburse multiple installment loans in accordance with the following requirements:

(1) Disbursement must be in two or more installments.

(2) No installment can exceed one-half of the loan.

(3) The interval between the first and second installment must be at least one-third of the enrollment period for which the loan is made. However, if the lender determines that the student needs the second installment sooner for the cost of attendance, the lender may disburse the second installment sooner. The lender must document in its records the reason for making an earlier disbursement. For purposes of this paragraph, the period of enrollment may not exceed 12 months.

(d) *Termination of special payments.* The Commissioner's obligation to pay interest benefits and special allowance on the undisbursed portion of a multiple installment loan terminates on the date the lender determines that the borrower—

(1) Is no longer enrolled at least half-time at a participating school; or

(2) No longer desires undisbursed loan funds.

(20 U.S.C. 1078, 1082.)

**§ 177.303 Penalty interest payments to lenders.**

(a) *General.* If the Commissioner has not authorized the United States Department of the Treasury to pay either interest benefits or special allowance within 30 days after receipt of an accurate, timely and complete request for payment from any lender, the Commissioner pays that lender an increased payment known as penalty interest.

(b) *How is the amount of penalty interest determined?*

(1) Penalty interest is the daily interest that accrues on the special allowance and interest benefit payments otherwise due to the lender. The daily interest is computed at—

(i) The daily rate of 7 percent; plus

(ii) The annual rate of the special allowance for the 3-month period for which the interest benefits and special allowance are being paid.

(2) The Commissioner pays penalty interest for—

(i) The 31st day after receipt of the request for payment or the 31st day after the final day of the period (or periods) covered by the request, whichever is later; and

(ii) Each succeeding day until the Commissioner authorizes payment. The day on which payment is authorized is also counted.

(20 U.S.C. 1087-1.)

## Subpart D—Guarantee Agency Programs

**§ 177.400 Agreements between a guarantee agency and the Commissioner.**

(a) The Commissioner enters into agreements with a guarantee agency, enabling the agency to participate in the GSLP, if the Commissioner determines that the guarantee agency program meets the requirements of this subpart. Separate agreements, based on various requirements, are necessary for the agency to receive some or all of the benefits available to it.

(b) *Types of agreements.* There are six agreements. Specific requirements for each agreement, and additional requirements for receiving some benefits, are described in this subpart.

(1) *Basic agreement.* A guarantee agency must have a basic agreement to participate in the GSLP in any way. Under this agreement—

(i) Borrowers whose loans are insured may qualify for Federal interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders may receive special allowance and penalty interest payments and, through the guarantee agency, death, disability, and bankruptcy claim payments;

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the agreements listed below.

(2) *Federal advances for reserve fund agreement.* A guarantee agency must have this agreement to receive Federal advances to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(3) *Additional Federal advances for claim payments agreement.* A guarantee agency must have this agreement to receive Federal advances to pay insurance claims.

(4) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement of 80 percent of its losses on default claims.

(5) *Supplemental reinsurance agreement.* A guarantee agency, with this agreement, receives reimbursement of up to 100 percent of its losses on default claims.

(6) *Secondary administrative cost allowance agreement.* A guarantee agency establishes this agreement by applying for and receiving the secondary administrative cost allowance.

(c) *Failure to comply with agreements.* If the Commissioner finds that a guarantee agency has made incomplete or incorrect statements in connection with an agreement, or has failed to comply with an agreement or with applicable Federal law or regulations, the Commissioner takes actions necessary to protect the interests of the United States. These actions may include—

(1) Withholding payments to the guarantee agency;

(2) Requiring reimbursement of payments; or

(3) Suspending or terminating an agreement.

(d) *Remedial actions.* (1)(i) The Commissioner or the guarantee agency may terminate any agreement upon 60 days written notice.

(ii) The Commissioner terminates an agreement only under circumstances described in paragraph (c) of this section.

(iii) Termination does not affect obligations incurred under the agreement before the effective date of the termination.

(2) The Commissioner's suspension or termination of an agreement, requirement of reimbursement, or withholding of payments is not final until the guarantee agency has been given reasonable notice of the intended action and an opportunity for a hearing. The Commissioner withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing only if the Commissioner finds this emergency action necessary to prevent substantial harm to Federal interests.

(e) The Commissioner's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(f) All the agreements are subject to subsequent changes in the GSLP law or regulations.

(20 U.S.C. 1072, 1078, 1078–1, 1082, 1087, 1087–1.)

### § 177.401 Basic agreement.

(a) *General.* (1) The basic agreement is required for all participation by a guarantee agency in the GSLP. In this agreement, the guarantee agency assures the Commissioner that its program meets the requirements of paragraph (b) of this section and agrees to maintain the administrative and fiscal standards of paragraph (c) of this section.

(2) The basic agreement shall contain other provisions, and be supported by any material, required by the Commissioner.

(b) *Program requirements.* The guarantee agency shall ensure, through its policies and the requirements that it imposes on participating lenders, schools, and students, that its program meets the requirements of this paragraph.

(1) *Aggregate loan limits.* The aggregate insured unpaid principal amount for all GSLP loans made to a student may not exceed—

(i) $7,500 to an undergraduate student; or

(ii) $15,000 to a graduate or professional student, including loans made to that student for undergraduate study.

(2) *Annual amounts.* (i) The maximum loan amount authorized for any one academic year must be at least $1,000, but not more than $2,500 to an undergraduate student and $5,000 to a graduate or professional student. Exceptions to this rule for certain loans are contained in paragraph (b)(3) of this section.

(ii) If the program insures loans to half-time students, its loan maximum must be at least $500 for a half-time student in any academic year.

(iii) A guarantee agency does not violate subparagraphs (i) or (ii) if it makes the maximum loan amounts listed in those subparagraphs applicable to either of the following periods:

(A) A period that does not exceed 12 months; or,

(B) A period in which the borrower earns the credits required by the borrower's school to advance in academic standing, as normally measured on an academic year basis (for example, from freshman to sophomore).

(iv) In no case may the amount of a loan exceed the student's estimated cost of attendance less estimated financial assistance.

(3) *Special rules for a loan made by a State lender or a loan made or originated by a school.* The maximum loan amount shall be further limited to—

(i) The lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program; and

(ii) $1,500 for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made for a single academic period of less than 5 months is not subject to these requirements. For purposes of this subparagraph, all loans made within a period of 90 days will be considered a single loan.

(4) *Student eligibility.* (i) A student in any year of study at a participating school shall be eligible for a loan.

(ii) Loans must be available to any student for at least 6 academic years of study or the equivalent.

(5) *Student responsibilities.* (i) The student shall promptly notify the lender of any change of address.

(ii) The student shall give the lender, as part of the loan application process—

(A) An affidavit, described in § 177.203, that the loan will be used for the cost of attendance;

(B) Information from the student that provides a basis for determining that the student qualifies as an eligible student;

(C) Information from the school that provides a basis for determining that the student qualifies as an eligible student; and

(D) Information concerning the student's outstanding GSLP loans.

(6) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.

(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

(iv) The lender may not disburse loan funds earlier than is reasonably necessary to meet the borrower's cost of

attendance for the period for which the loan is intended.

(7) *School notification requirements.* For each loan insured, as a condition of insurance, the school that certified the borrower's enrollment shall be notified of the insurance, the amount of the loan, and the name of the lender.

This notification may be made either—

(i) By the lender or the guarantee agency informing the school of these facts no later than 30 days after the initial disbursement of the loan; or

(ii) By the lender sending all loan checks to the school for delivery to the borrower, except that this method may not be used if the school is not located in a State.

(8) *Commencement of repayment.* (i) Except for a borrower enrolled in a correspondence course or as provided in subparagraph (iii), the borrower's repayment period begins no earlier than nine months nor later than one year after the date the borrower ceases to be at least—

(A) A full-time student, if the guarantee agency restricts its program to full-time students; or

(B) A half-time student, if the guarantee agency insures loans to part-time students.

(ii) *Exception for a correspondence student.* The repayment period begins not earlier than nine months nor later than one year after whichever of the following occurs first:

(A) The borrower completes the program.

(B) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 177.604. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for a particular assignment if the student establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(C) The expiration of a 60-day period following the latest allowable date established by the school for completing the program in the schedule required under § 177.604.

(iii) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the 9- to 12-month grace period.

(iv) If conditions that justify a deferment of repayment exist at the expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over without any additional grace period.

(9) *Length of repayment period.* In general, the lender must allow the borrower at least 5 years but not more than 10 years to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay the loan within 15 years after it is made. There are exceptions, however, to these rules:

(i) If the borrower receives a deferment or has been granted forbearance under procedures approved by the guarantee agency, the periods of deferment or forbearance are not counted in the 5-, 10-, and 15-year periods.

(ii) If the minimum annual repayment required in subparagraph (v) would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iii) During the grace period, the borrower may request and be granted by the lender a repayment period of less than 5 years. At any time and without the necessity of lender agreement, the borrower may have the total repayment period extended to a minimum of 5 years.

(iv) *Prepayment.* The borrower may prepay the whole or any part of the loan at any time without penalty.

(v) *Minimum annual payment.* During each year of the repayment period, the borrower's payments to all holders of his or her GSLP loans must total at least $360 or the unpaid balance of all the loans including interest, whichever amount is less. There are, however, exceptions to this rule:

(A) If the borrower and lender agree, the amount paid may be less.

(B) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must meet this requirement. The provisions of subparagraphs (A) and (B) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been granted under procedures approved by the guarantee agency.

(10) *Deferment.* Once the repayment period begins principal payments are postponed during specified periods and under conditions described in § 177.508.

(11) *Interest.* (i) Exclusive of any insurance premium, the maximum interest on the unpaid principal balance of a loan may not exceed 7 percent. The unpaid principal balance of a loan may include capitalized interest to the extent authorized by the guarantee agency.

(ii) The borrower shall not be liable for any portion of the interest that is payable by the Commissioner, and the lender may not collect or attempt to collect that portion from the borrower.

(12) *Insurance premiums:* (i) The guarantee agency may charge an insurance premium to the lender on each loan. This insurance premium may be used only to insure loans and to cover costs incurred by the guarantee agency in the administration of its loan insurance program. The lender may pass this charge on to the borrower.

(ii) *Rate.* The insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges that may have been added to the principal.

(iii) *Refund requirements.* The length of time for which the premium is charged determines whether a refund must be made.

(A) If the insurance premium is charged for a period extending no longer than 1 year after the borrower's anticipated graduation date, the premium need not be refunded to the borrower even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(B) If the insurance premium is charged in advance for a period extending beyond 1 year after the anticipated graduation date, the insurance premium must be refunded to the borrower as required in paragraph (b)(12) (iv) of this section.

(iv) *Computation of refund.* (A) If the borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium attributable to the repayment period shall be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as prepayment of the insurance premium for later periods, if any premium will be required, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If the borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to subsequent periods of two or more years must be refunded to the borrower.

(13) *Insurance liability.* The guarantee agency must insure at least 80 percent of the unpaid principal balance of each loan insured.

(14) *Guarantee agency administration.* In the case of a State loan insurance program, the program shall be administered by a single State agency,

or by one or more private nonprofit institutions or organizations under supervision of a single State agency. For this purpose, "supervision" includes setting policies and procedures for, and having full responsibility for, the operation of the program.

(15) *Loan assignment.* A loan may be assigned only to—

(i) An eligible lender; or

(ii) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or adjudication as a bankrupt.

"Assigned" means any kind of transfer, including transfer as security.

(c) *Administrative and fiscal standards required of the guarantee agency.*—(1) *Establishment of procedures.* To enter into a basic agreement, the guarantee agency shall establish administrative and fiscal procedures that the Commissioner may require to ensure proper administration of the agency's loan insurance program.

(2) *Dissemination of standards and procedures.* The guarantee agency shall establish and disseminate to concerned parties its standards and procedures for—

(i) School and lender participation in its program;

(ii) Limitation, suspension, or termination of school and lender participation;

(iii) Approval of forbearance;

(iv) Timely filing of default, death, disability, and bankruptcy claims by lenders; and

(v) Due diligence in making, servicing and collecting loans.

(3) *Due diligence.* The guarantee agency shall ensure that due diligence, including resort to litigation as appropriate, will be exercised by lenders in making, servicing, and collecting loans. The guarantee agency also shall exercise due diligence, including resort to litigation as appropriate, in collecting loans on which default claims have been paid. "Due diligence" is defined in § 177.200.

(20 U.S.C. 1078, 1082; 42 U.S.C. 5055(e).)

**§177.402 Death, disability, and bankruptcy payments.**

(a) *Loans made prior to December 15, 1968.* If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968 dies or becomes totally and permanently disabled, the Commissioner reimburses the agency under the provisions of the reinsurance agreement. The agency is not required to seek to recover the amount of its loss from the borrower or the borrower's estate.

(b) *Loans made after December 14, 1968.* (1) If a borrower who received a loan after December 14, 1968 dies or becomes totally and permanently disabled, the Commissioner cancels the borrower's obligation by paying the lender the amount owed. If a borrower is adjudicated a bankrupt, the Commissioner pays the amount owed. The Commissioner cancels these loans whether the holder of the loan is a lender or the guarantee agency.

(2) Any further reference in this section to death and disability claims relates only to loans made after December 14, 1968. Reference to bankruptcy claims relates to all loans, whenever they were made.

(c) The procedures in § 177.514 for determining whether a borrower has died, is totally and permanently disabled, or has been adjudicated a bankrupt, and for handling the loans of such borrowers, apply to guarantee agency programs with the following modifications:

(1) The references to the Commissioner in §177.514(a) and (c)(2) shall be understood to mean the guarantee agency if the loan is held by a lender.

(2) References to the FISLP shall be understood to mean the guarantee agency program.

(3) References to the lender shall be understood to mean the guarantee agency if the loan is held by a guarantee agency.

(d) No death, disability, or bankruptcy claim may be paid if the loan is not considered insurable by the guarantee agency or if a default claim for that loan previously has been disapproved by the guarantee agency.

(e) *Claim procedures for loans held by a lender.* (1) *Claim submission.* (i) The lender shall submit evidence that the borrower has died, become totally and permanently disabled, or been adjudicated a bankrupt to the guarantee agency. The agency shall return to the lender any submission that is not accurate and complete.

(ii) After determining that a claim is valid the guarantee agency may pay the lender the amount authorized by paragraph (e)(2) of this section. The Commissioner periodically reimburses the guarantee agency for these payments.

(2) *Amount of claim payment.* The Commissioner determines the amount of the loss to be paid the lender according to the standards used to determine claim payments under the FISLP. These are found in § 177.517 (a)(2)(ii), (a)(3), and (b), with the following modifications:

(i) References to FISLP insurance shall be understood to mean guarantee agency insurance.

(ii) Paragraph (b)(1)(ii) of § 177.517 shall be understood to mean the period prescribed by the guarantee agency.

(iii) References to the Commissioner shall be understood to mean the guarantee agency in paragraphs (b)(1)(iii) and (iv) of § 177.517.

(f) *Claim procedures for loans held by the guarantee agency.*

(1) The Commissioner pays a death, disability, or bankruptcy claim on a loan held by the guarantee agency after payment of a default claim to the lender only if—

(i) The borrower dies, becomes totally and permanently disabled, or is adjudicated a bankrupt within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extend the 15-year period;

(ii) the guarantee agency has not written off the loan as uncollectible; and

(iii) The guarantee agency exercised due diligence in the collection of the loan until the borrower died, became totally and permanently disabled, or was adjudicated a bankrupt.

(2) *Amount of claim payment.* (i) The Commissioner pays the guarantee agency the amount owed on the loan, including accrued interest. The Commissioner pays interest that accrues for a period of up to 60 days from the date the guarantee agency determines that the borrower is dead, totally and permanently disabled, or adjudicated a bankrupt until the guarantee agency submits the claim to the Commissioner. The amount of the payment is reduced by the amount of any reinsurance claim paid by the Commissioner for the loan, less any subsequent reimbursement to the Commissioner from amounts collected from or on behalf of the borrower.

(ii) If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Commissioner paid a bankruptcy claim, the guarantee agency shall submit 100 percent of these payments to the Commissioner.

(3) If a loan that the Commissioner has paid as a bankruptcy claim under this paragraph is not discharged in bankruptcy it will be treated as a default. The guarantee agency shall pay to the Commissioner the difference between the amount received from the Commissioner as a bankruptcy claim and the amount it would have received as a default claim. In determining the difference, the guarantee agency shall take into account any payments made by or on behalf of the borrower that the agency would have retained on a default claim but submitted to the

Commissioner under paragraph (f)(2)(ii) of this section.

(20 U.S.C. 1082, 1087.)

**§ 177.403 Federal advances for reserve fund.**

(a) *General.*—(1) *State guarantee agencies.* The Commissioner may make an advance to a State guarantee agency to help establish or strengthen the reserve fund that backs the agency's loan guarantees.

(2) *Private nonprofit guarantee agencies.* The Commissioner may make an advance to one or more private nonprofit guarantee agencies that operate in a State if, for a fiscal year—

(i) There is no State guarantee agency that has a basic agreement; and

(ii) The Commissioner consults the chief executive officer of the State and finds it unlikely that the State will have a student loan insurance program that year.

(3) The Commissioner may make an advance both to a State guarantee agency and to one or more private nonprofit guarantee agencies if the Commissioner finds that the advances are necessary so that students in each participating school have access to a guarantee agency program.

(b) *Application.* The guarantee agency must apply to the Commissioner in order to receive the advance. The application must be submitted in the manner and contain the information that the Commissioner requires.

(c) *Formula for State's allotment.* The amount available for each State is determined according to the formula in section 442(b) (2) and (3) of the Act.

(d) *Method and prerequisites for payment.* (1) The Commissioner advances a smaller amount for a State than the maximum authorized if the Commissioner finds that the maximum amount is not needed. The Commissioner bases this finding on the expected demand for loans in the State and other relevant factors.

(2) To receive an advance the guarantee agency must demonstrate to the Commissioner that, unless the advance is made, the agency will be unable to assure its lenders that it could guarantee all eligible loans that lenders intend to make within the next two years. In evaluating a request for an advance, the Commissioner will consider—

(i) The extent to which the reserve fund is currently committed to back loan guarantees; and

(ii) The likelihood that the additional advance will result in greater loan accessiblity for eligible students. This demonstration is not required of an agency for the first two years of its operation if the agency first entered into a basic agreement after September 30, 1976 or was not carrying on an active loan insurance program on that date.

(e) *Matching requirement.* The agency must match an advance by the Commissioner with an equal amount from non-Federal sources, which may include the unencumbered non-Federal portion of a reserve fund. The term "unencumbered non-Federal portion" is defined in section 422(a)(2) of the Act.

(f) *Terms and conditions of advance.* The Commissioner makes the advance on terms and conditions specified in an agreement between the Commissioner and the guarantee agency that includes the following provisions:

(1) The guarantee agency shall maintain a separate account within its reserve fund, to which it shall credit the advance (and required matching funds) plus other sums that are—

(i) Appropriated by a State for loan insurance purposes;

(ii) Received by the guarantee agency as loan insurance premiums;

(iii) Received by the guarantee agency through gift, grant, or other means for loan insurance purposes;

(iv) Collected on defaulted loans, including reinsurance payments by the Commissioner; or

(v) Derived from investment of these funds.

(2) The fund to which advances are credited may be used only to—

(i) Guarantee loans to students covered by the guarantee agency program;

(ii) Pay insurance claims;

(iii) Refund overpayment of insurance premiums; or

(iv) Repay advances or reinsurance payments made by the Commissioner.

However, there is one exception to this rule: Loan insurance premiums and interest or investment earnings of the fund may also be used for payments necessary for the proper administration of the guarantee agency's program.

(3) Loan insurance premiums may not be used to provide lenders with a greater yield or for making incentive payments to lenders.

(4) The guarantee agency shall invest the fund only in low-risk securities, and shall exercise the judgment and care in this investment that persons of prudence exercise in the permanent disposition of, rather than speculation with, their own funds.

(5) The Commissioner may require the guarantee agency to repay part or all of the advance when the Commissioner finds that the funds advanced are no longer required for the guarantee agency to maintain an adequate reserve. In making this finding, the Commissioner considers—

(i) The maturity and solvency of the reserve fund; and

(ii) The agency's requirements for new loan guarantees, based on its prior experience.

(20 U.S.C. 1072, 1082.)

**§ 177.404 Additional Federal advances for claim payments.**

(a) *General.*—(1) *State guarantee agencies.* To the extent that funds are appropriated by Congress for this purpose, the Commissioner makes an advance to a State guarantee agency that has a reinsurance agreement. The advance may be used only to pay insurance claims.

(2) *Private nonprofit guarantee agencies.* (i) The Commissioner may make an advance to one or more private nonprofit guarantee agencies in a State in a fiscal year only if the agency has a reinsurance agreement and, for that fiscal year—

(A) The State does not have a guarantee agency program; and

(B) The Commissioner consults the chief executive officer of the State and finds it unlikely that the State will have such a program that year.

(ii) A private nonprofit agency shall—

(A) Agree to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agree to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agree that its insurance will not be denied any student because of his or her choice of schools or lack of need; and

(D) Certify that it is not an eligible educational institution and that it does not have substantial affiliation with an eligible educational institution.

(b) *Application.* The guarantee agency must apply in order to receive an initial advance. The application must be submitted as prescribed by the Commissioner. A subsequent advance does not require an additional application by the agency but does require submission of the data required to compute the amount of the advance.

(c) *Number of payments.* (1) *Established agencies.* (i) If the guarantee agency, before October 12, 1976 was actively carrying on a program for which it had a basic agreement in effect, an advance may be made to that agency for each of three consecutive calendar years.

(ii) The agency may request the date of the first advance. The Commissioner authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a).

(2) *New agencies.* (i) If the guarantee agency enters into a basic agreement on or after October 12, 1976, or if the agency was not actively carrying on a program covered by a basic agreement on or before that date, an advance may be made to that agency for each of five consecutive calendar years.

(ii) The guarantee agency may request the date of the first advance. The Commissioner authorizes the subsequent advances for payment on the same day of the year that the initial advance was made.

(iii) An additional advance may be made to a private nonprofit agency only if the agency continues to qualify under paragraph (a).

(d) *Amount of advance.* The amount of the advance is determined according to the formula in § 422(c)(2) of the Act.

(e) *Terms and conditions of the advance.* The Commissioner makes an advance on terms and conditions specified in an agreement between the Commissioner and the guarantee agency that includes the following:

(1) The guarantee agency shall maintain a separate account within its reserve fund to which it shall credit the advance.

(2) The guarantee agency shall use the earnings, if any, on investment of the advance only for paying insurance claims.

(3) The guarantee agency shall repay the advance when the total amount advanced exceeds 20 percent of the guarantee agency's outstanding insurance obligation. The guarantee agency shall repay the excess over 20 percent to the Commissioner at the beginning of the next fiscal year. For this purpose, a guarantee agency's "outstanding insurance obligation" is the total principal amount of loans covered by the agency's basic agreement minus—

(i) The total principal amount of loans that have been fully repaid by the borrower, the guarantee agency, or the Commissioner; and

(ii) Loans that have been cancelled. In the case of a private nonprofit guarantee agency, these amounts are determined separately for each State for which the agency has received an advance under this section.

(20 U.S.C. 1072, 1082.)

**§ 177.405 Federal reinsurance agreement.**

(a) The Commissioner may enter into a reinsurance agreement with a guarantee agency that has a basic agreement. Under a reinsurance agreement, the Commissioner will reimburse the guarantee agency for 80 percent of its losses on GSLP loans. This agreement is a prerequisite for the supplemental reinsurance agreement under which the Commissioner reimburses the guarantee agency for up to 100 percent of its losses.

(1) *Definition of losses.* In this section, "losses" means the amount the agency pays a lender for a default claim minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Commissioner reimburses the agency. Losses may include unpaid principal and accrued interest.

(2) *Exclusion.* Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Claims on loans to borrowers adjudicated bankrupt also are not covered. Those claims are paid under § 177.402.

(b) The Commissioner will enter into a reinsurance agreement only if the agreement would be consistent with any State laws or regulations, and agreements between lenders and the guarantee agency, regarding the maintenance of the guarantee agency's reserve fund.

(c) The Commissioner may find that there is a Federal interest in other aspects of the guarantee agency's operations and may review those operations in deciding whether to enter into or extend a reinsurance agreement.

(d) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has terminated, whether to make a subsequent agreement, the Commissioner may consider the adequacy of—

(1) The lenders' and the guarantee agency's efforts to collect defaulted loans; and

(2) The guarantee agency's efforts to provide GSLP loans for all eligible borrowers.

(e) Losses on loans that are covered by a reinsurance agreement and were outstanding when the reinsurance agreement was entered into are covered by the agreement only if the default occurs after that time or, if later, after the effective date of the agreement.

(f) *Terms and conditions.* The agreement must contain terms and conditions that the Commissioner finds necessary to promote the purposes of the GSLP and to protect the United States from unreasonable loss, including the following terms and conditions:

(1) The guarantee agency shall assure the Commissioner that, for every reinsurance claim is submits—

(i) The terms of the loan comply with all Federal requirements;

(ii) All reasonable efforts have been made by the lender that submitted the default claim to collect the loan;

(iii) The loan was in default before the lender was paid for the claim; and

(iv) The agency will make all reasonable efforts to collect the loan after the Commissioner pays the reinsurance claim.

(2) The Commissioner prescribes the documentation required to receive payment, and the manner in which payment, is made. The Commissioner may subtract amounts owed by the guarantee agency from amounts owed to the guarantee agency.

(3) An amount equal to each reinsurance payment shall be credited promptly by the agency to its reserve fund.

(4) Payments made by the borrower to the guarantee agency on a defaulted loan after the Commissioner has paid a reinsurance claim on that loan may be applied first to reduce either the principal or interest owed. The borrower's payments may be applied to other charges, such as late charges or attorney's fees, only after the repayment of all principal and interest. If the borrower's repayment schedule or actual payments result in payments that are too small to pay the interest as it accrues, the guarantee agency shall review the borrower's financial situation at least every six months. If feasible, the agency shall adjust the distribution of each payment between principal and interest so that the principal will be paid within a reasonable time.

(5) The guarantee agency shall pay the Commissioner an equitable share of any payment made by or on behalf of a defaulted borrower after the Commissioner has reimbursed the agency.

(6) Unless the Commissioner approves otherwise, the guarantee agency shall submit the Commissioner's equitable share of borrower payments to the Commissioner with 60 days of its receipt of the payments.

(7) There is no other subrogation of the United States to the rights of the guarantee agency on any loan that is subject to this agreement.

(8) Nothing in a reinsurance agreement shall be construed to keep a lender from granting forbearance to a borrower under published criteria of the guarantee agency.

(g) The "Commissioner's equitable share" of borrower payments is defined

in § 428(c)(6) of the Act, and is calculated for a complete fiscal year.

(1) The term "overhead" used in that definition includes space and utilities costs.

(2) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Commissioner, in a manner prescribed by the Commissioner, information concerning its total borrower payments received and its total administrative costs of collection of loans and preclaims assistance for default prevention incurred during the fiscal year. If this submission shows that the guarantee agency has not paid all of the "Commissioner's equitable share" of borrower payments to the Commissioner for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Commissioner.

(20 U.S.C. 1078, 1082.)

**§ 177.406 Supplemental Federal reinsurance.**

(a) The Commissioner may enter into a supplemental reinsurance agreement annually with a guarantee agency that has a reinsurance agreement and that meets the conditions of this section.

(b) *Amount of supplemental reinsurance payments.* (1) The Commissioner reimburses a guarantee agency having supplemental reinsurance for 100 percent of its losses, with the following exceptions:

(i) *When reinsurance claims paid by the Commissioner to a guarantee agency for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's reinsurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When reinsurance claims paid by the Commissioner to a guarantee agency for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's reinsurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) *Exception for a new guarantee agency.* For a guarantee agency that entered into a basic agreement after September 30, 1976, or was not actively carrying on a program covered by a basic agreement on October 1, 1976, the Commissioner pays 100 percent of its losses for five consecutive fiscal years beginning with the first year of its operation. The Commissioner monitors programs of this type and, if an agency does not prudently administer its program, the Commissioner may determine that it does not continue to qualify for this exception.

(c) *Definitions.* (1) "Losses" is defined in § 177.405(a).

(2) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for insurance claims on loans.

(d) *Program requirements.* To enter into a supplemental reinsurance agreement, a guarantee agency program must meet the following conditions:

(1) *Annual amounts.* The maximum annual loan amount must be $2,500 for an undergraduate student, and $5,000 for a graduate or professional student, who is carrying at least a half-time workload in an academic year.

(2) *Aggregate loan limits.* The agency shall insure an aggregate unpaid principal amount of $7,500 for an undergraduate student or $15,000 for a graduate or professional student. The $15,000 limit includes loans made to the borrower prior to the borrower's becoming a graduate or professional student.

(3) *Extent of insurance.* The agency shall insure 100 percent of the unpaid principal of loan made by lenders under its program.

(4) *School eligibility.* Except in the case of correspondence schools, the agency's eligibility criteria for schools may not be more stringent than those of the FISLP. However, the agency may exclude a school if—

(i) The school's eligibility is limited, suspended, or terminated by the Commissioner under Part 168, or by the agency under comparable standards and procedures; or

(ii) There is a State constitutional prohibition affecting a school's eligibility.

(5) *Out-of-State schools.* The agency shall insure loans made to students who are legal residents of the State where the agency operates, but who attend out-of-State schools. In insuring these loans, the agency shall not impose any restrictions not applicable to legal residents of the State who attend in-State schools.

(6) *School lender provisions.* (i) The agency shall provide that a school may be a lender under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended or terminated by the Commissioner under § 177.611 or subpart G of these regulations or by the agency under comparable criteria and procedures; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not insure loans made by school lenders that are not located in the geographic area that the agency serves.

(7) *Reports.* The agency shall agree to report to the Commissioner by July 1 of each year regarding—

(i) Its school lender eligibility criteria;

(ii) Its procedures for the limitation, suspension, and termination of school lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months, and a summary of the actions taken on the applications; and

(iv) A list of all eligible school lenders under the agency's program.

(e) *Terms and conditions.* The supplemental reinsurance agreement will contain, at a minimum, the following terms and conditions, in addition to other provisions of the basic agreement or the reinsurance agreement that the Commissioner includes:

(1) *Adherence to qualifying standards.* The agency shall assure that the program requirements of paragraph (d) of this section are continuously met.

(2) *Reports and records.* The agency shall make reports and keep records that the Commissioner reasonably requires. It shall give the Commissioner access to those records to verify their correctness.

(3) *Application of payments.* If a borrower makes payments on a loan after the Commissioner has paid a reinsurance claim on that loan, the agency shall return to the Commissioner an equitable share of the payments. The "Commissioner's equitable share" is defined in § 428(c)(6) of the Act and is calculated for a complete fiscal year.

(i) The term "overhead" used in that definition includes space and utilities costs.

(ii) By December 31 of the succeeding fiscal year, the guarantee agency must submit to the Commissioner, in a manner prescribed by the Commissioner, information concerning its total borrower payments received and its total administrative costs of collections of loans and preclaims assistance for default prevention incurred during the fiscal year. If this

submission shows that the guarantee agency has not paid all of the "Commissioner's equitable share" of borrower payments to the Commissioner for the fiscal year, the guarantee agency must at that time pay the additional amount due to the Commissioner.

(4) An agreement is renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of these regulations.

(5) Before the Commissioner pays a supplemental reinsurance claim, the guarantee agency must give the Commissioner a statement of its "amount of loans in repayment" at the end of the preceding fiscal year. The method for determining this amount is given in paragraph (c)(2).

(20 U.S.C. 1078, 1078-1.)

**§ 177.407 Administrative cost allowances for guarantee agencies.**

(a) *General.* To the extent that funds are appropriated by Congress in any fiscal year for this purpose, the Commissioner may make payments to a guarantee agency having a basic agreement for the primary and secondary administrative cost allowances.

(1) *Total payments.* Payments of allowances to a guarantee agency for any fiscal year made under paragraphs (b) and (c) do not exceed, for each allowance, one-half of 1 percent of the total principal amount of loans for which the guarantee agency issued insurance during that fiscal year.

(i) If the amount appropriated for any fiscal year is insufficient to pay all guarantee agencies the full amounts for which they would otherwise be eligible, payments to all agencies are proportionately reduced.

(ii) In the event of such an insufficiency, if additional funds become available for making payments for that fiscal year, additional payments are distributed on the same basis as they were reduced.

(2) *Application.* The guarantee agency shall submit an application for each allowance to the Commissioner by January 1 of the fiscal year for which it is requesting the allowance. The application must contain information and assurances that the Commissioner reasonably requires, including the following—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section (categorized by the types of costs listed in paragraph (a)(3)(i) of this section);

(iii) Assurances that sufficient administrative and fiscal procedures, including an annual independent audit or, if a State guarantee agency is subject to State audit procedures not under its control, a biennial independent audit, will be used to ensure that the administrative allowances are used in accordance with the provisions of this section, and that the audit report will be made available to the Commissioner on request;

(iv) Assurances that the guarantee agency will furnish any further information, including estimates, that the Commissioner may reasonably require to carry out the provisions of this section;

(v) For the primary allowance application only, an estimate of the total amount of new loan volume expected to be insured during the fiscal year; and

(vi) For the secondary allowance only, assurance that the agency's program—

(A) Meets all the requirements for a supplemental reinsurance agreement; and

(B) Insures loans for students who are not legal residents of the State, but who are attending participating schools in the State other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools.

(3) *Definitions.* (i) The terms "administrative costs of promotion of commercial lender participation", "administrative costs of collection of loans" and "administrative costs of preclaim assistance for default prevention," as used in paragraphs (b) and (c) of this section, are defined in section 428(f)(3) of the Act.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(b) *Primary allowance.*—(1) *Basic qualification.* The agency must have a basic agreement.

(2) *Use of funds.* The primary allowance must be used by the agency to meet administrative costs not taken into account by the agency under the formula for determining the "Commissioner's equitable share" of borrower payments made after the Commissioner has paid reinsurance claims to the agency.

(i) Except as provided in paragraph (b)(2)(ii) of this section for new agencies, each guarantee agency that receives payments under this paragraph shall apply the payments according to the following distribution—

(A) Not less than one-fourth toward the administrative costs of promotion of commercial lender participation;

(B) Not less than one-half toward the administrative costs of collection of loans and of preclaim assistance for default prevention; and

(C) The balance toward other administrative costs related to the student loan insurance program of the guarantee agency.

(ii) If a guarantee agency enters into a basic agreement after September 30, 1977, or was not actively carrying on its insurance program on October 1, 1977—

(A) The spending minimum described in paragraph (b)(2)(i) for the administrative costs of collection of loans and preclaim assistance for default prevention does not apply during the first fiscal year in which the agency is eligible to receive the advance; and

(B) The spending minimum for these costs is 20 percent of the total primary allowance for each of the next two fiscal years.

(c) *Secondary allowance.* (1) Payment of the secondary allowance is made in addition to payment of the primary allowance.

(2) *Basic qualification.* The agency must have a reinsurance agreement.

(3) *Use of funds.* These payments may be used by the agency only to meet administrative costs of promotion of commercial lender participation, administrative costs of collection of loans, administrative costs of preclaim assistance for default prevention, and other administrative costs related to the student loan insurance program of the guarantee agency. Also, these payments must be used to meet only administrative costs not taken into account by the agency under the formula for determining the "Commissioner's equitable share" of borrower payments made after the Commissioner has paid reinsurance claims to the agency.

(4) The Commissioner's payment of the secondary allowance establishes an agreement between the Commissioner and the guarantee agency with respect to the assurances contained in the application.

(20 U.S.C. 1078, 1078-1, 1082.)

**§ 177.408 Records, reports, and inspection requirements for guarantee agency programs.**

(a) *Records.* (1) A guarantee agency shall keep the records specifically required by this section and the records necessary to make reports required by this subpart. The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible. For the purposes of this section, the term

"paid in full" includes loans paid by the Commissioner on account of the borrower's death, permanent and total disability, or discharge in bankruptcy. These records must be as complete and accurate as is necessary to document fully the agency's reports.

(2) The guarantee agency shall require participating lenders to keep records on guaranteed loans as prescribed by the Commissioner. These shall include complete and accurate records of each loan account, showing each transaction and affording ready identification of the borrower's status. A lender shall retain records of a loan for at least five years from the date the loan has been paid in full by the borrower or the lender has been reimbursed for a loss on the loan by the guarantee agency. The Commissioner may, in particular cases, require the retention of records beyond this 5-year minimum period.

(3) Guarantee agencies and lenders may store records in microfilm or computer format. However, the lender or guarantee agency holding a promissory note shall retain the actual note until the loan is paid in full or determined by the guarantee agency to be uncollectible. When repayment is complete, the lender or guarantee agency shall return the actual note to the borrower and retain a copy for the prescribed period. If a loan is written off as uncollectible, the original note need not be retained, but a copy must be retained for the prescribed period.

(b) *Reports.* (1) The agency shall submit reports to the Commissioner upon request concerning the status of its reserve funds, and the operations of its loan insurance program.

(2) The agency shall submit to the Commissioner, at least annually, a report of the total insured loan volume and default volume and rate on all loans insured after December 31, 1976, and on loans insured earlier if data is available, for each of the following categories of lenders:

(i) Schools.

(ii) State or private nonprofit direct lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, or credit unions).

(iv) All other types of institutions or agencies. Loan volume and default data shall be reported according to the category of original lender, not subsequent holder. If a guarantee agency operates in more than one State, a separate report must be submitted for each State of operation.

(3) The agency shall submit to the Commissioner its application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of the agency's program, whenever requested to do so by the Commissioner and whenever changes or new materials are proposed. The Commissioner reviews these materials for administrative and fiscal sufficiency and for conformance to statutory and regulatory provisions.

(4) Lenders shall submit to the agency the information necessary for the agency to complete its reports to the Commissioner.

(5) The agency shall submit, or require its lenders to submit, upon the Commissioner's request, information the Commissioner needs to determine the amount of interest and special allowance to be paid on the agency's insured loans.

(c) *Inspections.* (1) A guarantee agency shall give the Commissioner, or other agencies of the government designated by the Commissioner, access to its records in order to assure the accuracy of the reports described in paragraph (b) of this section.

(2) A guarantee agency shall provide in its agreement with a lender or in its statements of procedures that the lender shall give the Commissioner, or other agencies of the government designated by the Commissioner, and the agency access to the lender's records in order to assure the accuracy of the reports required under paragraphs (b) (4) and (5) of this section.

(20 U.S.C. 1072, 1078, 1082.)

## Subpart E—Federal Insured Student Loan Program

### § 177.500 Circumstances under which loans may be insured under the FISLP.

(a) The Commissioner may insure all loans made by lenders located in a State in which—

(1) No guarantee agency program is operating; or

(2) A guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Commissioner may insure loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only under the following conditions:

(1) The Commissioner may insure loans to those students who do not meet the agency's residency requirements.

(2) The Commissioner may insure all loans made by a lender if the lender is not able to obtain the insurance of the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements.

(3) The Commissioner may insure further loans to a student, with the approval of the guarantee agency, if that student has previously received a FISLP loan from the same lender that has not been repaid.

(4) If the Commissioner finds that—

(i) No single guarantee agency program is reasonably accessible to students at one school, as compared to students at other schools over a comparable period of time; and

(ii) Insuring loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans, the Commissioner may insure loans made to those students by a lender in that State. This paragraph would apply if—

(A) The guarantee agency in a State did not recognize a school as being eligible but the school was eligible under the FISLP; or

(B) A majority of the persons enrolled at the school met the conditions of student eligibility for FISLP loans, but were not recognized as eligible students under the guarantee agency program.

(c) For purposes of paragraphs (a) and (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for insuring loans under the FISLP, the Commissioner may require the lender to submit evidence that the conditions described in this section exist.

(e) The Commissioner only denies loan insurance, because of this section, to a school lender which has entered into an agreement with the Commissioner under §177.601 if the Commissioner first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Commissioner considers satisfactory.

(20 U.S.C. 1071, 1073.)

**§ 177.501 Extent of Federal insurance under the FISLP.**

(a) *General rule.* Except as provided in paragraph (b) of this section, the Commissioner's insurance liability of any FISLP loan is 100 percent of the unpaid balance of principal and, to the extent permitted under § 177.517, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, for loans insured after the date described in paragraph (b)(4) of this section, the Commissioner's insurance liability is less than 100 percent under the following conditions:

(i) *When all default claims paid by the Commissioner to a State lender for any fiscal year reach 5 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's insurance liability on a claim subsequently paid for that fiscal year will be 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) *When all default claims paid by the Commissioner to a State lender for any fiscal year reach 9 percent of the "amount of loans in repayment" at the end of the preceding fiscal year.* In this event, the Commissioner's insurance liability on a claim subsequently paid for that fiscal year will be 80 percent of the amount of the unpaid principal balance plus accrued interest.

(2) The potential reduction in insurance liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under the FISLP, and during each of the four succeeding fiscal years.

(3) For purposes of this section, the "amount of loans in repayment" means the original principal amount of all loans insured by the Commissioner minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Commissioner for insurance claims on loans.

(4) The applicable date for purposes of paragraph (b) of this section is—

(i) The 90th day after the adjournment of the next regular session of the legislature of the State in which the lender is operating that convenes after October 12, 1976; or

(ii) The date one year from that 90th day if the primary source of lending capital for the lender is the sale of bonds, and the constitution of the State in which the lender is operating prohibits a pledge of the State's credit as security against the bonds.

(5) For purposes of this paragraph, payments by the Commissioner on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(20 U.S.C. 1075.)

**§ 177.502 The application to be a lender under the FISLP.**

(a) *General.* To participate in the FISLP, a lender must submit an application to the Commissioner. The Commissioner responds to the lender's request to participate in the FISLP within 30 days of receipt of an application.

(b) *Criteria for evaluating an application.* In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Commissioner may consider the following criteria:

(1) Whether the applicant is capable of complying with these regulations as they apply to lenders.

(2) Whether the applicant is capable of implementing adequate procedures for making, servicing and collecting loans.

(3) If the applicant has had prior experience with a similar Federal, State or private nonprofit student loan program, the amount and rate of loans that are currently delinquent or in default under that program.

(4) The financial resources of the applicant.

(5) In the case of a school that is seeking approval as a lender, its accreditation status with the preferred condition being accreditation.

(c) The Commissioner may require an applicant to submit sufficient materials with its application so that the Commissioner may fairly evaluate it in accordance with these criteria.

(d) *Denial of participation.* (1) If the Commissioner decides not to approve the application for an insurance contract, the reason for the decision is included in the Commissioner's response.

(2) The Commissioner provides an opportunity for the lender to meet with a designated Office of Education official if the lender wishes to appeal the Commissioner's decision.

(3) However, the Commissioner need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(20 U.S.C. 1082.)

**§ 177.503 The FISLP lender insurance contract.**

(a) *Approval of insurance contract.* (1) If the Commissioner approves a lender's application to be a FISLP lender, the Commissioner and the lender sign an insurance contract. No loan is insured unless covered by an insurance contract.

(2) In general, under an insurance contract the lender agrees to comply with all laws, regulations and other requirements applicable to its participation as a lender in the FISLP, and the Commissioner agrees to insure each eligible FISLP loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Commissioner's insurance liability is the amount of unpaid principal and interest, except for certain loans made by a State lender as provided in § 177.501(b).

(4) The contract may contain a limit on the duration of the contract and the number or amount of FISLP loans a lender may make or hold.

(b)(1) Except as otherwise approved by the Commissioner, an insurance contract with a school lender shall limit the loans made by that school lender which will be covered by Federal loan insurance to those made to students—

(i) Who are in attendance at that school; or

(ii) Who are in attendance at other schools under the same ownership or who are employees, or dependents of employees, of that school lender or those other schools, under circumstances the Commissioner considers appropriate for insurance.

(2) A limit imposed under paragraph (a)(4) of this section on a school lender which makes loans to students in attendance at other schools under the same ownership, or to employees or dependents of employees of those other schools, may be imposed on a school-by-school basis.

(20 U.S.C. 1079, 1082.)

**§ 177.504 Issuance of Federal loan insurance.**

(a) *Application for insurance.* A lender having an insurance contract shall submit an application to the Commissioner for Federal loan insurance on each intended loan that the lender determines to be eligible for insurance. The application shall be on a form prescribed by the Commissioner. The Commissioner notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursement on a loan made prior to

the Commissioner's approval of that loan is insurable.

(b) *Conditions of insurance coverage.* The Commissioner issues FISLP insurance in reliance on the implied representations of the lender that all requirements for the initial insurability of the loan have been met. As described in § 177.517, the continuance of the FISLP insurance is conditioned upon compliance by all holders of the loan with these regulations. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collection of a FISLP loan.

(20 U.S.C. 1079, 1082.)

§ 177.505 Limitations on maximum loan amounts.

(a) *Annual amounts.* The Commissioner does not insure a loan that would exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance awarded for that period. In addition, the total amount a student may borrow in any academic year of study may not exceed—

(1) $2,500, to a student who has not successfully completed a program of undergraduate study, but no more than—

(i) The lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(A) Is enrolled in the first academic year of undergraduate study; and

(B) Was not previously enrolled in an undergraduate program.

(ii) $1,500, for a loan made or originated by a school to a student who is enrolled in the first academic year of undergraduate study and was not previously enrolled in an undergraduate program, unless the loan is to be disbursed in two or more installments. None of the installments may exceed one-half of the loan, and the interval between the first and second installments must be at least one-third of the academic period for which the loan is intended. However, a loan that is to be made to cover the expenses of a single academic period of less than 5 months is not subject to these requirements. For purposes of this subparagraph, all loans made within a period of 90 days will be considered a single loan; and

(2) $5,000, to a graduate or professional student.

(b) *Aggregate loan limits.* The Commissioner does not insure a loan in an amount which, together with the unpaid principal amount of all other GSLP loans to the student, would result in an aggregate loan amount in excess of—

(1) $7,500, in the case of any undergraduate student; or

(2) $15,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) *Limitation on loan to a student enrolled in a correspondence course.* The Commissioner does not insure a loan to a student pursuing a correspondence course which exceeds the amount of the contract price of the course. If a correspondence course includes a period of required resident training, the Commissioner insures additional loan amounts to cover the estimated cost of attendance for that portion of the course.

(20 U.S.C. 1075, 1078, 1079, 1082.)

§ 177.506 Insurance premiums.

(a) *General.* The Commissioner charges each lender an insurance premium for each loan that is insured.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *Method of calculation.* (1) The lender shall calculate the insurance premium on the basis of the number of months beginning with the month following the month that funds are disbursed to the borrower and ending 12 months after the borrower's anticipated date of graduation from the school for attendance at which the loan is sought.

(2) *For multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *Method of payment.* (1) The Commissioner may bill the lender for the insurance premium, or may require the lender to pay the insurance premium at the time of disbursement. At the Commissioner's discretion, the Commissioner may collect the insurance premium by offsetting it against amounts payable by the Commissioner to the lender.

(2) Insurance coverage on a FISLP loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Commissioner may, however, excuse late payment of an insurance premium, and reinstate the insurance on a loan, if the Commissioner is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(e) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower in the form of a one-time charge. The lender may bill the borrower for the insurance premium or may deduct the amount from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation.

(f) *Refund provisions.* The premium is not refundable by the Commissioner, and is not refunded by the lender to the borrower, even if the borrower graduates or withdraws from school, defaults, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt prior to the anticipated graduation date.

(20 U.S.C. 1077, 1079, 1082.)

§ 177.507 Repayment of loans.

(a) *Commencement of repayment.* (1) Except for a borrower enrolled in a correspondence course, or as provided in paragraph (a)(3) of this section, a borrower's repayment period begins not earlier than 9 months nor later than one year after the date the borrower ceases to be at least a half-time student at a participating school. This 9–12 month period is commonly called the "grace period."

(2) *Exception for a correspondence student.* The repayment period begins not earlier than 9 months nor later than one year after whichever of the following occurs first:

(i) The borrower completes the program.

(ii) The borrower falls 60 days behind the due date for a scheduled assignment, according to the schedule required in § 177.604. However, the school may permit one restoration to in-school status for a borrower who falls 60 days behind the due date for a particular assignment if the borrower establishes in writing a desire to continue in the program and an understanding that the required lessons must be submitted on time.

(iii) The expiration of a 60-day period following the latest allowable date established by the school in the schedule required under § 177.604 for completing the program.

(3) A borrower may request and be granted a repayment schedule that begins prior to the end of the established grace period. In this event, a borrower may not further utilize the grace period.

(4) If conditions that justify a deferment of repayment exist at the

expiration of the grace period, the deferment period commences at the expiration of the grace period. Regardless of when a deferment period begins, repayment of the loan begins or resumes after the deferment period is over, without any additional grace period.

(b) *Length of repayment period.* In general, a lender shall allow a borrower at least 5 years, but not more than 10 years, to repay a loan, calculated from the beginning of the repayment period. The borrower shall, however, fully repay a loan within 15 years after it is made. There are exceptions, however, to these rules:

(1) If the borrower receives an authorized deferment or has been granted forbearance, as described in § 177.512(c), the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(2) If the minimum annual repayment required in paragraph (d) would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(3) During the grace period, the borrower may request and be granted by the lender a repayment period of less than five years. At any time and without the necessity of lender agreement the borrower may have the total repayment period extended to a minimum of five years.

(c) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(d) *Minimum annual payment.* (1) During each year of the repayment period, a borrower's payments to all holders of his or her GSLP loans must total at least $360 or the unpaid balance of all loans, including interest, whichever amount is less. There are, however, two exceptions to this rule:

(i) If the borrower and the lender agree, the amount paid may be less.

(ii) If both the borrower and his or her spouse have GSLP loans, their combined annual payment must meet this requirement.

(2) The provisions of subparagraphs (1) (i) and (ii) may not result in an extension of the 10- and 15-year repayment period maximums, unless forbearance has been approved under § 177.512(c).

(e) *Borrower failure to enroll on at least a half-time basis.* If a lender disburses a FISLP loan and later learns that the borrower has not been or will not be a student enrolled on at least a half-time basis at a participating school during the period for which the loan was intended, the lender shall—

(1) Cease billing the Commissioner for interest payments on the borrower's behalf, since no further interest benefits on that loan are payable;

(2) Notify the borrower that full payment of the loan is immediately due. If necessary, the lender may allow the borrower to repay the loan in installments; and

(3) Attempt to collect from the borrower the amount of any interest already paid on the borrower's behalf by the Commissioner and offset any amount collected on the lender's next billing for Federal interest benefits.

(f) *Repayment schedule agreement.* When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender must promptly contact the borrower to establish the precise terms of repayment. The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than 3 times greater than any other installment.

(g) *Supplemental repayment agreement.* (1) For a loan made by a school lender, the lender and the borrower may enter into an agreement supplementing the regular repayment schedule agreement under paragraph (f). Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule as long as the borrower makes payments in accordance with a separate schedule. However, the regular schedule must provide for equal installments.

(2) The purpose of a supplemental repayment agreement is to extend the 10- and 15-year repayment period maximums and to permit a lender to offer a borrower a repayment schedule based on other than equal or graduated payments. For example, a supplemental repayment agreement may base the amount of the borrower's payment on the borrower's income.

(3) The agreement and separate schedule must contain terms that the Commissioner believes do not unduly burden the borrower and do not subject the Commissioner to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Commissioner's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement. The lender may not insist upon the establishment of a supplemental repayment agreement unless the borrower's written consent to enter into an agreement of this type was obtained by the lender at the time the loan was made.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if the buyer agrees to accept the loan subject to the terms of the supplemental agreement.

(6) for purposes of the special allowance, interest benefits during a deferment period, and the determination of the amount of loss on an insurance claim, the unpaid principal balance of the loan is based on the regular repayment agreement.

(20 U.S.C. 1077, 1078, 1079, 1082.)

**§ 177.508 Deferment.**

(a) *Borrower eligibility.* (1) Once the repayment period has commenced, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods. Except as provided in paragraph (c)(4) of this section, a period of authorized deferment begins when the condition entitling a borrower to deferment first exists. Interest accrues and is payed by the borrower during these periods unless the borrower was originally eligible for Federal interest benefits. The borrower shall provide to the lender all documentation required to establish eligibility for a specific type of deferment.

(2) A deferment cannot be denied by a lender when the borrower meets the eligibility criteria, even though the borrower may be delinquent, but not in default, in making required installment payments. The 120- or 180-day period required to establish a default does not run during a deferment period. When the deferment period expires, a borrower resumes the delinquent status that existed when the deferment period began.

(3) A borrower whose loan is in default is not eligible for a deferment unless the borrower has made satisfactory arrangements with the lender to bring the account current.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in one of the following activities:

(1) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(2) Study under a graduate fellowship program approved by the Commissioner, as described in paragraph (d).

(3) Up to 3 years of active duty service in the United States Armed Forces.

(4) Up to 3 years of volunteer service under the Peace Corps Act.

(5) Up to 3 years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs).

(6) Pursuing a course of study under a rehabilitation training program for disabled individuals that is approved by the Commissioner.

(7) Conscientiously seeking but unable to find full-time employment in the United States over a single period of up to twelve months, as described in paragraph (c)(1).

(c)(1) *Basic eligibility for an unemployment deferment.* (i) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least 3 months.

(ii) A borrower is entitled to the deferment whether or not he or she has been previously employed. If previously employed, the borrower is entitled to a deferment regardless of the circumstances under which the employment ended.

(iii) An unemployment deferment is not justified if the borrower has sought employment only in kinds of positions or at salary and responsibility levels for which he or she feels qualified by virtue of education or previous experience.

(2) *Submission of request.* To receive an unemployment deferment, a borrower shall request the deferment in writing to the holder of the loan. To continue the deferment for more than 6 months, the borrower shall submit a second request by the end of that period. Each request must be signed and dated and contain the following:

(i) A statement from the borrower describing his or her conscientious search for full-time employment.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address.

(iii) Certification that the borrower has registered with a public or private employment agency, if one is accessible, specifiying its name and address.

(iv) The borrower's agreement to promptly notify the lender when he or she becomes employed full-time.

(3) *Lender's approval or disapproval of request.* (i) The lender must review the borrower's request and notify the borrower of its decision within one month after receipt of the request.

(ii) The lender may rely upon the written statements provided by the borrower, unless the lender has information to the contrary.

(iii) If the lender is satisfied that the borrower has conscientiously searched for full-time employment and otherwise meets the requirements for an unemployment deferment, the lender shall approve the request.

(iv) If the borrower's request does not justify an employment deferment, the lender may grant the borrower forbearance if authorized under § 177.512.

(4) *When the unemployment deferment begins:* An unemployment deferment begins—

(i) On the date that the lender approves the request; or

(ii) On a date not in excess of 60 days prior to the lender's approval, if the unemployment existed at the earlier date.

(5) *When the unemployment deferment ends:* An unemployment deferment ends on the earliest of—

(i) The date the lender learns that the borrower has become employed full-time;

(ii) One month after the date when a certification of unemployment deferment eligibility is due from the borrower but has not been received; or

(iii) 12 months after the commencement of the deferment period.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study under a graduate fellowship program, a borrower must be enrolled in a program that has the Commissioner's approval. To be approved by the Commissioner, the program must—

(i) Provide sufficient financial support to fellows to allow for full-time study for at least six months;

(ii) Require, prior to the award of that financial support, a written statement from each applicant which explains the applicant's objectives; and

(iii) Require a graduate fellow to submit periodic reports, projects, or other evidence of the graduate fellow's progress.

(2) In addition, the borrower must—

(i) Hold at least a baccalaureate degree conferred by an institution of higher education;

(ii) Be engaged in full-time study, that may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability;

(iii) Have been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(20 U.S.C. 1077, 1078, 1082; 42 U.S.C. 5055(e).)

**§ 177.509 Due diligence in making and disbursing a loan.**

(a) *General.* (1) The loan-making process includes the processing of necessary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of the borrower's responsibilities under the loan, the completion by the borrower of the promissory note, and the disbursement of the loan proceeds.

(2) Except as may be authorized by the Commissioner, a lender may not delegate its loan-making functions except to a school with whom the lender has an origination relationship. If an origination relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender which does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school which are contained in the application. A school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing of forms.* Before making a loan, a lender must, subject to paragraph (a)(2) of this section, determine that all required forms have been accurately completed by the borrower, the school, and the lender. A lender must not ask the borrower to sign any form before all information requested of the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.*

(1) A lender may make a loan only to an eligible student. To the extent authorized in paragraph (a)(2) of this section, the lender may make this determination based on the information provided by the school and the borrower on the application form.

(2) In determining the amount of the loan to be made, within the limitations of § 177.505, the lender should review the data on cost of attendance, and on other amounts of financial aid that have been awarded to the student for the intended loan period, which is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance for the academic period for which the loan is intended less estimated financial assistance.

(d) *Borrower interview.* (1) Before making an initial loan to a student, a lender should meet personally with the student in order to ensure that the student understands his or her rights and responsibilities under the loan.

(2) In particular, the lender should explain to the student that the loan must be repaid and that the loan funds may only be applied toward educational expenses.

(e) *Promissory note.* (1) The lender shall obtain from the borrower an executed promissory note for each loan as proof of the borrower's indebtedness.

(2) The Commissioner periodically makes an approved promissory note form available to FISLP lenders. Except as specified in paragraph (e)(3) of this section, a lender, without the Commissioner's prior approval, may not add any clauses to, or modify any of the provisions of, the most current promissory note provided by the Commissioner.

(3) At the lender's option the following provision may be included in the promissory note: "The maker agrees to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period."

(4) The lender must give the borrower a copy of each executed note.

(f) *Security and endorsement.* (1) A FISLP loan must be made without security.

(2) With one exception, a FISLP loan must be made without endorsement. If a borrower is a minor and cannot under applicable local law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's FISLP note. For purposes of this paragraph, "endorsement" means a signature of any party—other than the borrower—who is to assume either primary or secondary liability on the note.

(g) *Loan disbursement.* (1) A lender may not disburse a loan prior to the issuance of the insurance commitment by the Commissioner. The lender shall disburse loan funds by means of a check payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. Deposit of the check in the borrower's account at a bank or other financial institution constitutes endorsement for purposes of this paragraph.

(i) Unless the borrower attends a school not in a State or if the lender is also a school, a lender shall mail the check to the school, to the attention of the school official named on the loan application for delivery to the borrower. The lender may not mail the check to the school earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made and in no case, without the Commissioner's approval, earlier than 30 days prior to the date on which the student is scheduled to enroll.

(ii) If a borrower is attending a school located outside a State (a foreign school), the lender must send the check to the borrower directly. Within 30 days of the disbursement, the lender must notify the school of the amount of the loan insured.

(iii) A school lender may not disburse a loan to a student earlier than is reasonably necessary to meet the cost of attendance for the period for which the loan is made. If a student fails to enroll at that school during the academic period for which the loan was made, the Commissioner pays subsequent insurance, interest benefits, and special allowance claims only on amounts disbursed to the student that are reasonably necessary for travel from the student's residence to the school.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower shall personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(3) For purposes of the FISLP, a check is a draft drawn on a bank and payable on demand.

(4) *Late disbursements:* (i) Under certain circumstances a lender, with the prior approval of the Commissioner, may disburse a FISLP loan after a borrower has ceased to be enrolled on at least a half-time basis. The approval of late disbursements includes both the approval of disbursements to be made after the expiration date of the insurance commitment and the approval of disbursements to be made prior to the expiration date of the insurance commitment but after the borrower has ceased to be enrolled on at least a half-time basis.

(ii) Approval of late disbursements may be granted only when the Commissioner is satisfied that the loan proceeds will be used for the educational expenses of the period of enrollment for which the loan was made.

(20 U.S.C. 1077, 1080, 1082, 1083, 1085.)

**§ 177.510 Due diligence in servicing a loan.**

(a) *Borrower inquiries.* A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a loan.

(b) *Conversion of a loan to repayment status.* (1)(i) When a lender learns that a borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(ii) If the lender has exercised the option of including the provision authorized by § 177.509(e)(3) in the promissory note, it must provide a repayment schedule to the borrower not later than 150 days prior to the beginning of the repayment period.

(2) When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repayment schedule that retires the loan obligation as soon as possible, as permitted under § 177.507, without leading to default caused by the borrower's inability to make payments.

(3) Terms of repayment must be established by using an OE Form 1171 (Promissory Note-Installment), or a similar instrument, that is provided to the borrower and made a part of, and subject to the terms of, the borrower's original promissory note. A disclosure statement consistent with Federal Regulation Z, Truth-in-Lending, is an acceptable repayment schedule. The borrower's signature is not required on the instrument.

(4) The lender shall retain the original promissory note until the loan is paid in full. Within 30 days, the lender shall give the borrower the original promissory note and the repayment instrument.

(20 U.S.C. 1080, 1082, 1085.)

**§ 177.511 Due diligence in collecting a loan.**

(a) *General.* (1) A lender must exercise due diligence in the collection of a FISLP loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender, except as provided in paragraph (a)(2) of this section, shall implement the following procedures when a borrower fails to honor his or her payment obligation.

(2) Paragraphs (b) through (f) shall not apply—

(i) After it has been determined, or while a lender is seeking to have a determination made, that a borrower has died, become totally and permanently disabled, or been adjudicated a bankrupt, as set forth in § 177.514; or

(ii) After it has been determined that any of the conditions for filing a default claim without previous collection efforts exist, as set forth in §§ 177.515 and 177.517(e).

(b) *Initial delinquency.* (1) When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender must attempt to contact both the borrower and any endorser at least 3 more times at regular intervals during the rest of the 4-month period that started on the due date of the delinquent payment. These

contacts should become progressively more forceful in tone.

(2) If the lender has exercised the option of including the provision authorized by § 177.509(e)(3) in the promissory note, and the lender has complied with § 177.510(b)(1)(ii), the lender shall follow the procedures in paragraph (b)(1) of this section to attempt to cure a borrower's delinquency in executing the repayment schedule.

(c) *Skip-tracing assistance.* Whenever a lender does not know the borrower's current address, even while the borrower is in school, the lender shall attempt to locate the borrower through normal commercial collection techniques, including contacting any endorser or other individuals named on the borrower's loan application. If these efforts are unsuccessful, the lender shall attempt to learn the borrower's current address through use of the Office of Education's skip-tracing assistance. The Commissioner does not pay insurance on a default claim if the lender did not know the borrower's address but failed to request this skip-tracing assistance. If the lender obtains knowledge of the borrower's address prior to filing a default claim, the lender must attempt to contact the borrower.

(d) *Pre-claim assistance.* When a borrower is 60 days delinquent in making payment, or executing a repayment schedule in accordance with a provision in the promissory note authorized by § 177.509(e)(3), the lender must request pre-claim assistance from the Office of Education. This pre-claim assistance consists of a series of letters being sent to the borrower, urging the borrower to contact the lender and begin or resume payments. The Commissioner does not pay insurance on a default claim if the lender failed to request this pre-claim assistance.

(e) *Final demand letter.* A lender must send a final demand letter to the borrower and any endorser at least 30 days before the lender files a default claim. The lender must allow the borrower or endorser at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower or endorser whose address is unknown.

(f) *Litigation.* (1) If the borrower's loan is in default and the lender determines that the borrower or endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest together with reasonable attorney's fees. Prior to bringing suit the lender shall—

(i) Obtain the Commissioner's approval. A lender may seek the Commissioner's approval to bring suit in anticipation that the lender's collection efforts will be unsuccessful. The Commissioner will normally approve a lender's request to bring suit if the Commissioner is satisfied that the borrower or endorser has the ability to repay the loan and that the collection efforts required by this section have been, or will be, made prior to the lender's bringing suit;

(ii) Notify the borrower or endorser that the Commissioner's approval to bring suit has been obtained, and that suit will be brought unless the borrower or endorser cures the default; and

(iii) Indicate to the borrower or endorser that the lender will seek a judgment under which the borrower or endorser will be legally liable for payment of reasonable attorney's fees and court costs in addition to the unpaid principal and interest. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(2) The lender may bring suit if the borrower or endorser does not meet the terms of the lender's demand for payment within 10 days following the date of delivery of the notice to the borrower or endorser indicated on the receipt.

(3) A lender may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(20 U.S.C. 1080, 1082, 1085.)

### § 177.512 Forbearance.

(a) The Commissioner encourages a lender under the FISLP to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled. A lender may grant forbearance under paragraph (b) or (c) of this section whenever poor health or other personal problems affect the borrower's ability to make scheduled payments. If payments of interest are forborne they may be added to the principal amount of the loan obligation on the date that repayment begins or resumes or at the end of the period of forbearance.

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year limitations on length of repayment if the lender and the borrower agree in writing to the new terms.

(c) A lender may also grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment requirement and the 10- and 15-year limitations on length of repayment if the lender complies with these requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender shall state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender shall sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for postponement of all payments, the lender shall contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(20 U.S.C. 1080, 1082.)

### § 177.513 Assignment of a FISLP loan.

(a) *General.* A FISLP note may not be assigned except to another eligible lender. In this section "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A FISLP note assigned from one lender to another must be subject to a blanket endorsement together with other FISLP notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer must—

(i) Notify the Commissioner of the assignment; and

(ii) Ensure that the borrower is notified if the assignment results in the borrower being required to make installment payments, or direct other matters connected with the loan, to a party other than the party whom the borrower dealt with before the assignment. The buyer must include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c)(1) *Risks assumed by the buyer.* Upon acquiring a FISLP loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. A FISLP note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Commissioner denies the default claim if there was a legal defect affecting the initial validity or insurability of the loan and to the extent of the borrower's legal defenses. Furthermore, when a new holder files a claim on a FISLP loan, it must provide the Commissioner with the same documentation that would have been required of the original lender.

(2) *Special additional rules for assignment of loans made or originated by a school.* The buyer shall not be entitled to rely upon the statements provided by a school in the making or origination of a loan by the school. In addition, the Commissioner considers any unpaid tuition refund that was due to the borrower under § 177.608 before the assignment from a school that made or originated the loan as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Commissioner's approval.* (1) The approval of the Commissioner is required prior to the assignment of a note to any eligible lender which has not entered into a FISLP insurance contract with the Commissioner. The Commissioner approves such an assignment only if the Commissioner is satisfied that one of the parties to the assignment will comply with all the requirements applicable to lenders under the GSLP regulations.

(2) Any arrangement where the loan is assigned to an eligible lender that would hold the loan in trust must receive the Commissioner's prior approval. A lender that holds a loan as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on a holder of a loan.

(e) *Warranty.* (1) Nothing in this section precludes the buyer of a FISLP loan from obtaining a warranty from the seller covering certain future reductions by the Commissioner in computing the amount of insurable loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters that the buyer is responsible for under the GSLP regulations.

(20 U.S.C. 1079, 1080, 1082.)

**§ 177.514 Death, disability, and bankruptcy.**

(a) *Death.* (1) If a borrower dies, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled.

(2) The lender may not attempt to collect on the loan from the borrower's estate or any endorser.

(3) The lender may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the Commissioner on the basis of other evidence that the Commissioner finds conclusive.

(4) The lender shall return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If a borrower is determined to be totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on a FISLP loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her loan application unless the borrower's conditions has substantially deteriorated since he or she submitted the loan application.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender may not attempt to collect on the loan from the borrower or any endorser. The lender shall promptly request that the borrower or his or her representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided by the Commissioner, that the borrower is totally and permanently disabled. If the form is not submitted to the lender within 60 days of the date the lender requested it, the lender may resume collection unless the physician has notified the lender that a longer period of time is required to make the determination.

(3) If the lender receives a certification from a physician, as described in paragraph (b)(2) of this section, that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received from or on behalf of the borrower after being notified that the borrower claims to be totally and permanently disabled.

(c) *Bankruptcy.* (1) If a borrower has been adjudicated a bankrupt, the Commissioner will assume the borrower's liability for unpaid principal and interest.

(2) Once a lender determines that a borrower has been adjudicated a bankrupt, the lender may not attempt to collect on the loan and must file a bankruptcy claim with the Commissioner.

(3) The lender may determine that a borrower has been adjudicated a bankrupt upon receipt of notice of the first meeting of creditors from the bankruptcy court.

(4) If the loan obligation is not dicharged in bankruptcy, the Commissioner shall treat the claim as a default claim. The lender shall not be required to repurchase the loan.

(20 U.S.C. 1082, 1087.)

**§ 177.515 Cessation of lender collection activity in certain cases.**

(a) Whether or not a FISLP loan has entered the repayment period or the borrower is eligible for deferment, a lender shall cease collection activity on the loan, and file a default claim with the Commissioner within 60 days, after the lender determines that any of the following conditions exist:

(1) The school in which the borrower enrolled terminated its teaching activities involving that borrower during the academic period covered by the loan.

(2) The Commissioner—

(i) Has instituted an action to limit, suspend, or terminate the eligibility of the school in which the borrower was enrolled for the academic period covered by the loan, or the eligibility of any lender that has held the loan; and

(ii) Has directed that a claim be filed on the loan.

(3)(i) A school or a lender is the subject of a lawsuit or Federal administrative proceeding and the Commissioner determines that the proceeding involves allegations that, if proven, would entitle the borrower to refuse to repay all or a portion of the loan, or to obtain a judgment to recover payments made on the loan; and

(ii) The Commissioner has directed that a claim be filed on the loan.

(b)(1) If the Commissioner finds that a determination made by a lender under this section is correct, the Commissioner pays the default claim as otherwise provided for under these regulations.

(2) If the Commissioner finds that the lender's determination is not correct, the Commissioner refuses payment and the lender shall resume normal collection activity on the loan.

(c) A lender may not, as a result of a default claim filed with the Commissioner under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay his or her loan.

(20 U.S.C. 1080, 1082.)

**§ 177.516 Procedures for filing claims.**

(a) A lender may file an insurance claim for any of the following reasons:

(1) The loan is in default. A loan is not in default until the 120-day or, if applicable, the 180-day period, described in the definition of "default" in § 177.200, has elapsed. the 120- or 180-day period begins as follows:

(i) If the borrower fails to make an installment payment when due, the 120- or 180-day period begins the day after the due date of that installment.

(ii)(A) If the lender has exercised the option [under § 177.509(e)(3)] of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period, and the borrower has not executed a schedule by that date, despite compliance by the lender with § 177.516(b)(1)(ii), the 120-day period begins 120 days prior to the beginning of the repayment period.

(B) If the lender has exercised the option under § 177.509(e)(3) but sends the borrower the repayment schedule later than 150 days prior to the beginning of the repayment period, but prior to the beginning of the repayment period, the 120-day period begins 30 days after the lender actually sends the borrower the repayment schedule.

(iii) If the lender has not exercised the option of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days before the beginning of the repayment period, and the borrower cannot be located or, by the beginning of the repayment period, has not executed a schedule sent to him or her by the lender, the 120- or 180-day period begins on the first day of the repayment period.

(iv) If the borrower enters the repayment period without the lender's knowledge, the 120- or 180-day period begins on the day the lender discovers that the borrower has entered the repayment period.

(2) Any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 177.515 and 177.517(e).

(3) The borrower has died.

(4) The borrower is totally and permanently disabled.

(5) The borrower has been adjudicated a bankrupt.

(b) *Filing a claim application.* A lender shall file an insurance claim on a form provided by the Commissioner. The lender shall attach to the claim all documentation that the Commissioner may require. Failure to submit the required documentation may result in a claim not being honored. The Commissioner may also deny a claim that is not filed on time.

(c) *Documentation required for all FISLP claims.* The Commissioner requires the following documentation for all claims:

(1) The original promissory note.

(2) The loan application.

(3) A payment history, as described in § 177.519(a)(1)(ix), if any payments have been made.

(4) A collection history, as described in § 177.519(a)(1)(x), if the loan has entered the repayment period.

(d) *Assignment of note.* The Commissioner's payment of a claim is contingent upon receipt of an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender shall agree to reimburse the Commissioner for any overpayments of interest or special allowance that the Commissioner may have made for the loan.

(e) *Specific procedures applicable to the individual claim categories.* A lender must also comply with the following requirements for filing default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Commissioner that it has filed suit against the defaulted borrower, after obtaining the Commissioner's approval for the suit, it must file a default claim with the Commissioner within 90 days after the loan has been determined to be in default, or the lender has determined that any of the conditions for filing a default claim without collection efforts exist, as set forth in §§ 177.515 and 177.517(e). If the loan is in default under circumstances where the borrower has entered repayment without the lender's knowledge, the 90-day period for filing begins after the 120- or 180-day default period following the lender's discovery that the borrower has entered the repayment period.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) The repayment schedule.

(B) A collection history, as described in § 177.519(a)(1)(x).

(C) A copy of the final demand letter, if required under § 177.511.

(D) The original or a copy of all personal correspondence addressed to or from, or on behalf of, the borrower relevant to the amount owed by the borrower, whether that correspondence involved the original lender, a subsequent holder, or an independent servicing agency.

(E) Evidence of the lender's requests to the Office of Education for pre-claim assistance and, if a request was required under § 177.511(c), skip-tracing assistance.

(F) For a loan made by a school lender, whether or not the claim is filed by the school, a statement indicating whether the borrower enrolled at the school for the academic period for which the loan was intended and, if not, the amount of the loan that was reasonably necessary for the borrower's travel from his or her residence to the school.

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender shall promptly forward that notice to the Office of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender shall file a death claim with the Commissioner within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender shall submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender shall file a disability claim with the Commissioner within 60 days after it receives a certification from a licensed physician that a borrower is totally and permanently disabled. In addition to the documentation required for all claims, the lender shall submit with its disability claim a copy of the certification.

(4) *Bankruptcy claims.* A lender shall file a bankruptcy claim with the Commissioner within 60 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. In addition to the documentation required for all claims, the lender shall submit with its claim to the Commissioner the following:

(i) The repayment schedule, if the loan has entered into the repayment period.

(ii) An assignment to the United States of America of its proof of claim.

(iii) All pertinent documents sent to or received from the bankruptcy court.

(iv) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge.

(20 U.S.C. 1080, 1082, 1087.)

**§ 177.517 Determination of amount of loss on claims.**

(a) The amount of loss to be paid on a claim depends upon the type of claim involved.

(1) *Default claims.* The amount of loss to be paid on a default claim depends upon the date the Office of Education received the application for insurance commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or between August 19, 1972, and February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) Between July 1 and August 18, 1972, or after February 28, 1973, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(2) *Death and total and permanent disability claims.* The amount of loss to be paid on a death or disability claim depends upon the date the loan was disbursed. If the loan was disbursed—

(i) Prior to December 15, 1968, the amount of loss to be paid on the claim shall be equal to the unpaid balance of the original principal loan amount disbursed, or

(ii) After December 14, 1968, the amount of loss to be paid shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount may include capitalized interest.

(3) *Bankruptcy claims.* The amount of loss to be paid on these claims shall be equal to the unpaid balance of the principal and interest. The unpaid principal amount of the loan may include capitalized interest.

(b) *Payment of insured interest.* (1) When FISLP insurance covers unpaid interest, the payment on an approved claim covers the unpaid interest that accrues during the following periods:

(i) Before the beginning of the repayment period for a loan that does not qualify for Federal interest benefits, whether or not the accrued interest was added to the principal amount of the loan on the date upon which repayment of the first installment of principal fell due,

(ii) During the period before the claim is filed, not to exceed the period permitted under paragraph (e) of § 177.516 for filing the claim.

(iii) During a period not to exceed 30 days following the return of the claim to the lender by the Commissioner for additional documentation necessary for the claim to be approved by the Commissioner.

(iv) During the period required by the Commissioner to approve the claim and to authorize payment.

(2) When FISLP insurance covers unpaid interest, the Commissioner also pays the unpaid interest that accrues during other periods which are tied to the type of claim involved:

(i) The payment on a default claim covers unpaid interest that accrues through the date of default.

(ii) The payment on a bankruptcy claim covers unpaid interest that accrues before the receipt by the lender of the notice of the first meeting of creditors from the bankruptcy referee.

(iii) The payment on a death claim covers unpaid interest that accrues before the lender determines that the borrower is dead.

(iv) The payment on a disability claim covers unpaid interest that accrues before the lender receives a certification from a physician that the borrower is totally and permanently disabled.

(c) *Factors affecting the insurability of a loan.* (1) In determining whether to approve an insurance claim for payment, the Commissioner considers legal defects affecting the initial validity or insurability of the loan.

(2) The Commissioner also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies.

(3) The Commissioner further considers whether all holders of the loan have complied with the requirements of the FISLP regulations, including those concerned with the making, servicing, and collecting of a loan, the timely filing of a claim, and the submission of documents with a claim.

(4) The Commissioner does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Commissioner.

(d) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Commissioner deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(e) *Special rules for loans made by school lenders.* (1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Commissioner deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the borrower under § 177.608; or

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Commissioner. The Commissioner reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Commissioner deducts from the claim—

(i) An amount equal to any unpaid refund that the school owed the borrower under § 177.608 prior to the assignment of the loan to a subsequent holder;

(ii) An amount attributable to any portion of the program of study that the student was unable to complete because the school terminated its teaching activities during the period of time for which the student obtained a FISLP loan. If this situation occurs, the lender shall immediately file a default claim with the Commissioner. The Commissioner reimburses the lender in an amount which bears the same ratio to the total amount of the claim as the amount of the educational services that the student received before the school terminated its teaching activities bears to the total services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activities.

(f) *Special rules for a loan originated by a school.* For purposes of this section, a loan which is originated by a school shall be treated in accordance with paragraph (e)(1) of this section as if it were a loan made and still held by a school.

(g) *Circumstances under which defects in claims may be cured or excused.* (1) The Commissioner may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim.

(2) The Commissioner may excuse certain defects—

(i) If the holder submitting the default claim satisfies the Commissioner that the defect did not contribute to the default or prejudice the Commissioner's attempt to collect on the loan from the borrower; or

(ii) If the defect arose while the holder submitting the default claim was holding the loan but the Commissioner had previously found that the holder had procedures in effect sufficient to ensure that such a defect would not normally arise.

(3) The Commissioner may also excuse certain defects if the Commissioner is satisfied that—

(i) The defect arose while the loan was held by another lender;

(ii) The assignment of the loan was an arm's length transaction;

(iii) The present holder did not know of the defect at the time of the assignment; and

(iv) (A) The present holder could not have become aware of the defect through an examination of the loan documents; or

(B) The present holder had relied on a finding by the Commissioner that the lender holding the loan when the defect arose had procedures in effect sufficient to ensure that such a defect would not normally arise.

(20 U.S.C. 1080, 1082.)

**§ 177.518 The Commissioner's collection efforts after payment of a default claim.**

After paying a default claim on a FISLP loan, the Commissioner attempts to collect from the borrower and any valid endorser in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105). The Commissioner attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Commissioner refrains from collection against the borrower or endorser to the extent of any defense that either may have.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Commissioner refrains from collection to the extent of the unpaid refund calculated under § 177.608 if the borrower assigns to the Commissioner the right to receive the refund and the borrower agrees in writing to pay the Commissioner the remaining portion of his or her indebtedness on the loan.

(c) *The school attended by the borrower closed during the academic period covered by the loan.*

(1) In this situation, the Commissioner refrains from collection against the borrower or endorser to the extent that the borrower would have had a defense on the loan if the loan was—

(i) Made by the school;

(ii) Part of the same transaction as the student's enrollment at the school; and

(iii) Paid to the school in consideration for the educational services that were to be provided by the school.

(2) As a condition of this forgiveness the borrower must—

(i) Assign to the Commissioner the right to receive any refund that the school owes the borrower under § 177.608; and

(ii) Agree in writing to pay the Commissioner the remaining portion of his or her indebtedness on the loan.

(d) *A school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Commissioner determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Commissioner may suspend collection activity on all or part of a loan until the proceeding ends. The Commissioner suspends collection activity only for so long as the Commissioner believes that the proceeding is being energetically prosecuted in good faith and that the allegations that relate to the borrower's defense are reasonably likely to be proven. When a final resolution is reached, the Commissioner collects from the borrower to the extent appropriate.

(e) *A school or lender is the subject of a limitation, suspension, or termination action by the Commissioner.* In this situation, if the Commissioner determines that the final outcome of the action could provide the borrower with a full or partial defense on the loan, then the Commissioner may suspend collection activity pending the final resolution of the action. When a final resolution is reached, the Commissioner collects from the borrower to the extent appropriate.

(f) *The borrower dies, becomes totally and permanently disabled, or has the FISLP loan discharged in bankruptcy.* In this situation, the Commissioner terminates all collection activity against the borrower. If the borrower dies or becomes totally and permanently disabled the Commissioner also terminates all collection activity against any valid endorser. However, if the borrower's obligation is discharged in bankruptcy the Commissioner continues to attempt to collect the loan from any valid endorser.

(20 U.S.C. 1080, 1082.)

**§ 177.519 Records, reports, and inspection requirements for FISLP lenders.**

(a) *Records.* (1) A lender shall keep complete and accurate records of each FISLP loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include—

(i) The loan application;

(ii) The original promissory note, including the repayment instrument, until it is paid, after which a copy is required;

(iii) The repayment schedule;

(iv) A record of each disbursement of loan proceeds;

(v) Notices of changes in a borrower's address and status as at least a half-time student;

(vi) Evidence of the borrower's eligibility for a deferment;

(vii) The documents required for the exercise of forbearance;

(viii) Documentation of the assignment of the loan;

(ix) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amounts attributable to principal and interest;

(x) A collection history showing the date and subject of each communication with the borrower or endorser for collection of a delinquent loan; and

(xi) Any additional records as specifically required by these regulations which are necessary to document the validity of an insurance claim or to make any reports required by the Commissioner under these regulations.

(2)(i) A lender shall retain the records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Commissioner may require the retention of records beyond this minimum period.

(ii) The lender may store records in microfilm or computer format. However, the holder of a promissory note must retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(b) *Reports.* A lender shall submit reports to the Commissioner at the time and in the manner the Commissioner

may reasonably require, including but not limited to the following:

(1) The Lender's Manifest for FISLP loans.

(2) The Lender's Request for Payment of Interest on Student Loans.

(3) The Lender's Annual Report on Guaranteed Student Loans Outstanding.

(c) *Inspections.* Upon request, a lender shall afford the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(20 U.S.C. 1077, 1078, 1079, 1080, and 1082.)

## Subpart F—Requirements, Standards, and Payments for Participating Schools

### § 177.600 Participation agreement between an eligible school and the Commissioner.

(a) *General.* Participation of a school in the GSLP means that the school's students are eligible to receive GSLP loans. To participate in the GSLP, under either the FISLP or a guarantee agency program, a school must—

(1) Establish its basic eligibility as an institution of higher education or a vocational school, as defined in § 177.200, through certification by the Division of Eligibility and Agency Evaluation, Bureau of Higher and Continuing Education, Office of Education; and

(2) Enter into a written agreement with the Commissioner. The agreement must be signed by an appropriate official of the school on a form provided by the Commissioner.

(b) *Terms of the agreement.* In the agreement, the school promises to comply with the applicable provisions of—

(1) The Act and the GSLP regulations;

(2) 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs); and

(3) 45 CFR Part 178 (Student Consumer Information Services).

(c) *Time to respond.* The Commissioner responds to a school's request for an agreement to participate in the GSLP within 30 days after receiving the request.

(d) *Denial or limitation of participation.* (1) If the Commissioner decides not to approve a request for an agreement or approves only limited participation in the GSLP by the school, the reason for the decision is included in the response.

(2) The Commissioner provides an opportunity for the school to meet with a designated Office of Education official, if the school wishes to appeal a decision involving either—

(i) Denial of an agreement for participation; or

(ii) Approval of an agreement that limits the school's participation.

(3) The Commissioner does not, however, grant an oppoutunity for appeal or give reasons for denying the participation, or approving only the limited participation, of a school if the school submits its request within 6 months of a previous denial or limited approval.

(e) *Change in ownership or form of control.* A GSLP participation agreement automatically terminates when a school changes its ownership or form of control. The termination is effective at the time the change occurs. A new agreement must be signed and approved by the Commissioner for the school to participate under the new ownership or form of control.

(f) *Foreign schools.* A school outside the States shall be required to comply with the provisions of these regulations only to the extent determined by the Commissioner.

(20 U.S.C. 1082, 1088f-1.)

### § 177.601 Agreement between the Commissioner and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Commissioner in order to make or originate GSLP loans under either the FISLP or a guarantee agency program. The definition of orgination is in § 177.200.

(b) *Terms of the agreement.* An agreement to allow a school to either make or originate loans contains the following terms:

(1) The school will not make or originate loans which would be outstanding to more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis. An exception to this rule, however, is contained in paragraph (d) of this section.

(2) The school will not make or originate a loan for an academic period to an undergraduate student who has not previously obtained a loan that was made or originated by the school until the student provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(3) The school will inform any student who seeks to obtain a loan to be made or originated by that school that he or she must first make a good faith effort to obtain a loan from a commercial lender. In determining whether a school has complied with this requirement, the Commissioner may take into consideration any patterns reflected by the letters of denial or students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as an undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(5) Loans that the school makes or originates will be disbursed in multiple installments in accordance with the disbursement requirements in § 177.401(b)(3)(ii) and § 177.505(a)(1)(ii) if—

(i) The loan amount exceeds $1,500 for the academic year;

(ii) The borrower is in the first academic year of study as an undergraduate; and

(iii) The borrower was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.*

(1) To ensure under paragraph (b)(2) of this section that a student has sought and been denied a loan from a commercial lender for an academic period, the school shall obtain from the student—

(i) A written statement from a commercial lender indicating that the lender denied the student a loan for that academic period; or

(ii) The student's sworn statement indicating both the refusal of a loan by a commercial lender and that lender's refusal to provide a written statement of the denial.

(2) If the student's sworn statement is used to establish the denial of a loan, that statement must include—

(i) The name of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name of the official who communicated the denial to the student; and

(iv) The student's signature. The statement must be signed by the student in the presence of a notary or other person who is legally authorized to administer oaths or affirmations and who does not take part in the recruiting of students for enrollment at the school.

The notary or other person must sign the statement and, if appropriate, affix his or her seal or stamp.

(3) The refusal of a lender to make a loan to a student for the entire amount requested by the student constitutes a denial of a loan, if the school determines that the student is eligible for a loan of that amount. If the denial is based upon the student's inability to obtain the entire amount requested, the school may either—

(i) Make or originate a loan to that student for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the student.

(d) *Waiver of the 50 percent lending limit.* A school may request a waiver of the 50 percent lending limit under paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship to the school's present or prospective students. The Commissioner determines whether to grant the school a waiver after considering the following:

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of these students enrolled at the school who—

(i) Fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school.

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit.

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(e) *Schools that previously made or originated loans.* A school that is making or originating loans on the effective date of these regulations shall enter into an agreement with the Commissioner in order to continue this activity. The agreement must be submitted within 90 days of that effective date.

(20 U.S.C. 1075, 1078, 1082, 1083.)

**§ 177.602 Providing information to prospective students.**

(a) *General.* (1) A school shall present each of its prospective students with a complete and accurate statement containing information about the school. The statement must be in written form and must be presented to the prospective student prior to the time that he or she becomes obligated to pay the school any tuition or fees.

(2) The statement provided by the school must include information pertaining to—

(i) The school's current academic or training programs in which the student has expressed interest;

(ii) The school's faculty in those programs; and

(iii) The school's facilities relating to those programs.

(b) *Providing employment data.* In addition to the information required by paragraph (a) of this section, a school that offers programs or courses of study designed to prepare students for a particular vocational, trade or career field (e.g., truck driving, teaching or pharmacy) shall provide a prospective student in that field with a written statement regarding the employment of students previously enrolled in those programs or courses.

(1) The employment information must include data regarding the percentage of previously enrolled students who entered positions of employment directly related to their enrollment at the school and data regarding the average starting salaries of those students.

(2) The school may provide the prospective student with the most recent comparable regional or national statistical student employment data in lieu of the information about the school's own students if—

(i) After reasonable effort, the school cannot obtain meaningful data on the employment of its own students; or

(ii) The data the school possesses regarding its own students is more than 3 years old and cannot, after a reasonable effort, be updated.

(3) To the extent that information is available, the school should provide a prospective student with information regarding the long range prospects for employment in the particular vocational, trade or career field that the student intends to prepare for at the school.

(20 U.S.C. 1082, 1085, 1088f–1.)

**§ 177.603 Admissions criteria for a vocational, trade or career program.**

Before obligating a prospective student to pay any tuition or fees for a program or course of study designed to prepare a student for a particular vocational, trade or career field, a school must—

(a) Evaluate the prospective student's abilities by means of an examination or other appropriate criteria; and

(b) Determine that there is a substantial and reasonable basis to conclude that the prospective student has the ability to benefit from the instruction or training to be provided by the school.

(20 U.S.C. 1082, 1085, 1088f–1.)

**§ 177.604 Correspondence school schedule requirements.**

(a) *General.* A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students. This schedule must be given to a prospective student prior to that person's enrollment.

(b) *Information in the schedule.* The school shall include the following information in its schedule:

(1) The number of lessons in the course.

(2) The intervals at which lessons are to be submitted.

(3) The date by which the course is to be completed.

(4) The period of time within which any resident training must be completed.

(c) *Additional requirements.* The schedule must conform to the requirements set forth in paragraph (a)(3)(ii) of the definition of "vocational school" in § 177.200.

(20 U.S.C. 1082.)

**§ 177.605 Certifications by a participating school in connection with a student loan application.**

A school shall accurately and completely fill out its portion of a student's loan application. The information requested of the school pertains to the following:

(a) The student's eligibility for a loan determined in accordance with § 177.201.

(b) The student's estimated cost of attendance for the period for which the loan is sought.

(c) The student's estimated financial assistance for the period for which the loan is sought.

(20 U.S.C. 1077, 1078, 1085, 1088f.)

**§ 177.606 Administrative cost allowance to participating schools.**

(a) *General.* The Commissioner pays an administrative cost allowance to a participating school when funds for this purpose are appropriated by Congress. The administrative cost allowance payment is based on the number of students enrolled at the school who receive a GSLP loan during the award period.

(b) *How the amount of payment is determined.* (1) If funds are sufficient, each school is paid not more than $10 for each student who receives a GSLP

loan for a period of enrollment beginning in an award period.

(2) If appropriated funds for any fiscal year are insufficient to pay the full $10, payments are proportionately reduced.

(3) If additional funds become available for any fiscal year in which payments were reduced, the allowances are proportionately increased.

(c) *Student count.* For purposes of determining the number of GSLP borrowers enrolled at a school, no student can be counted more than once in the same award period.

(d) *Award period.* For the purpose of this section, "award period" means a 12-month period beginning on July 1 of each calendar year.

(e) *Use of the administrative cost allowance funds.* A school that receives an administrative cost allowance payment shall use those funds first to provide consumer information in accordance with 45 CFR Part 178, Student Consumer Information Services, and then to pay for additional costs of administering student financial aid programs under Title IV of the Higher Education Act of 1965.

(f) *Applying for the administrative cost allowance.* To receive the administrative cost allowance payment, a school must submit an application on a form and within the time limit prescribed by the Commissioner. The school submits the application only in a fiscal year when funds to make the payment have been appropriated by Congress.

(20 U.S.C. 1078, 1082.)

**§ 177.607 The student's loan check.**

(a) *Purpose.* This section establishes rules for how a school must process a student's GSLP loan check. The school must also comply with any rules for processing a loan check contained in 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs). The rules in this section do not apply to a loan issued by a school lender if the student is attending the school that made the loan.

(b) *General.* (1) Except in the case of a loan check for a student attending a school outside a State (a foreign school), a check issued by a FISLP lender is sent directly to the school where the student is enrolled or will be enrolling.

(2) A loan check issued by a lender under a guarantee agency program may also be sent directly to the school where the student is enrolled or will be enrolling.

(3) A loan check that is sent directly to the school is payable either jointly to the school and the student or only to the student.

(4) Generally, the school may only release a check to a student who has maintained eligibility for the loan by enrolling or continuing enrollment on at least a half-time basis. Exceptions to this rule are contained in paragraphs (f) and (g).

(c) *A check made payable to the student.* When a school receives a loan check that is payable to one of its students, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must promptly deliver the check to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check and deliver it to the student at the time of the student's enrollment. If after receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(d) *A jointly payable check.* When a school receives a loan check that is made jointly payable to the school and the student, the school shall process the check as follows:

(1) If the school receives the check after the student enrolls for the academic period for which the loan is intended, the school must either—

(i) Endorse the check on its own behalf and deliver it to the student; or

(ii) Obtain the student's endorsement, and—

(A) Retain that portion of the loan proceeds that the student currently owes the school for educational costs as described in paragraph (e) of this section; and

(B) Promptly give the remaining funds to the student.

(2) If the school receives the check before the student enrolls for the academic period for which the loan is intended, the school must hold the check until the student enrolls and then follow the procedures described in paragraph (d)(1) of this section. If after receiving a check for a student, the school determines that the student has not enrolled as expected, the school must return the check to the lender within 30 days of this determination.

(e) *Retaining student loan proceeds.* A school may only retain loan proceeds covering costs of attendance owed to the school over that part of the academic year for which substantially all of the school's students have been billed, unless the student requests in writing that the school retain additional loan proceeds in order to assist in budgeting his or her funds for the remainder of the academic year.

(f) *Return of a check received during the loan period.* If the school receives a loan check for a student during the academic period for which the loan was intended and the school determines that the student enrolled on at least a half-time basis but is no longer enrolled on at least that basis, the school must return the check to the lender within 30 days. If the student owes the school money for costs of attendance incurred during the period for which the loan was intended, the school should advise the student that the lender may, in accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, redisburse funds in certain circumstances.

(g) *A check received after the loan period ends.* If a school receives a loan check for a student after the academic period for which the loan was intended, the school shall process the check as follows:

(1) If the check is made payable only to the student, the school must return the check to the lender within 30 days of receipt of the check. If the student owes the school money for costs of attendance (e.g., tuition or other fees) that are directly payable to the school for the academic period for which the loan was intended, the school should advise the student that the lender may, in accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, redisburse funds in certain circumstances after the loan period has ended.

(2) In the case of a check that is jointly payable to the school and the student, the school must—

(i) If the student does not owe the school money for costs of attendance described in paragraph (g)(1) of this section, return the check to the lender within 30 days of receipt of the check; or

(ii) If the student does owe the school money for costs of attendance described in paragraph (g)(1) of this section—

(A) First, obtain the student's endorsement;

(B) Retain any loan proceeds that are owed the school by the student; and

(C) Return any remaining funds to the lender within 30 days of receipt of the check. If the student either refuses to endorse the check or cannot be located, the school must return the check to the lender within 30 days of receipt of the check.

(3) If the student owes a party other than the school (e.g., a landlord) money for costs of attendance incurred during the period for which the loan was intended, the school should advise the student that the lender may, in

accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, redisburse funds in certain circumstances after the loan period has ended.

(20 U.S.C. 1078, 1082.)

**§ 177.608 Refund policy.**

(a) *General.* (1) A school shall have a fair and equitable refund policy under which it will make a refund of unearned tuition, fees and room and board charges to a student who receives a GSLP loan and—

(i) Does not enroll for the academic period for which the loan was intended; or

(ii) Does not complete the academic period for which a loan was made.

(2) The school shall state its refund policy clearly in writing. The school shall include in its refund policy the procedure a student would follow to obtain a refund.

(3) The school shall provide the written statement containing its refund policy to a prospective student prior to the student's acceptance for initial enrollment. The school shall also make its refund policy known to currently enrolled students. It the school changes its refund policy, the school shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* In determining whether a school's refund policy is fair and equitable, the Commissioner considers the following factors:

(1) Whether the refund policy takes into consideration the period for which tuition, fees and room and board charges were paid.

(2) Whether the refund policy takes into consideration the length of time the student was enrolled at the school.

(3) Whether the refund policy takes into consideration the kind and amount of instruction, equipment and other services—

(i) Provided to the student over the period for which tuition, fees, and room and board charges were paid; and

(ii) Provided to the student over the period of time for which the student was enrolled.

(4) Whether the refund policy produces refunds in reasonable and equitable amounts when—

(i) The length of time the student was enrolled, and

(ii) The kind and amount of instruction and equipment and other services provided are compared with the period for which tuition, fees and room and board charges were paid. However, a school may retain reasonable fees, not to exceed $100, for the period for which tuition and other fees were required, to cover application, enrollment, registration, and other similar charges.

(5) Whether the refund policy provides that all monies paid the school by the student, except for the "reasonable fees" referred to in paragraph (b)(4) of this section, will be refunded, if the student notifies the school of his or her decision not to enroll prior to the 60th day before the scheduled date of enrollment.

(6) Whether the refund policy provides that the school will refund all monies paid by the student in excess of the following charges if the student notifies the school of his or her decision not to enroll during the 60-day period prior to the scheduled date of enrollment at the school:

(i) A deposit payment toward tuition for the student's first enrollment at that school that does not exceed 10 percent of the tuition for the academic period for which the GSLP loan was intended.

(ii) A deposit payment for room and board that does not exceed 10 percent of the total charges to the student for these services during the period for which the GSLP loan was intended.

(7) Whether the refund policy of the school is mandated by State law.

(8) Whether, in the case of an accredited school, the Commissioner has approved the refund policy requirements of the applicable accrediting agency.

(20 U.S.C. 1082, 1088f-1(a)(2).)

**§ 177.609 Determining the date of a student's withdrawal.**

(a) *Purpose.* This section establishes rules for how a school must determine the date (to include day, month and year) on which a student withdraws from the school for the purpose of—

(1) Calculating the amount of a refund due the student; and

(2) Reporting that the student has left the school.

(b) *The withdrawal date.* The school shall establish the date of a student's withdrawal as follows:

(1) Generally, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of his or her withdrawal; or

(ii) The date the school determines that a student has withdrawn.

Paragraphs (b)(2) and (b)(3) of this section contain additional rules applicable to particular situations.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established by the school under § 177.604. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may grant that student a restoration to in-school status. However, the school may not grant the student more than one restoration to in-school status on this basis.

(c) *Leaves of absence.* A student who is absent from school and who has been granted a leave of absence by the school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. A school may grant a leave of absence to a student provided—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student;

(3) The leave of absence does not—

(i) Exceed 60 days; or

(ii) Exceed six months if either of the following circumstances exists:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence; or

(B) The absence is requested because of the student's medically determinable condition. In this case, the student must provide the school with a recommendation from a physician for a leave of absence longer than 60 days; and

(4) The student has not previously been granted a leave of absence by the school. Additional leaves of absence for a student must be approved by the Commissioner.

(20 U.S.C. 1082, 1088f-1(a)(2).)

**§ 177.610 Payment of a refund to a lender.**

(a) *General.* (1) By applying for a GSLP loan, a student authorizes the school to pay directly to the lender that portion of his or her refund from the school that is allocable to that loan.

(2) A school shall pay that portion of the student's refund that is allocable to a GSLP loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity.

(3) When the school pays refund monies to a lender on behalf of a student, the school shall provide

simultaneous written notice to a student of this action.

(b) *Calculating what portion of the refund to allocate to the loan.* (1) In determining what portion of a student's refund for an academic period is allocable to a GSLP loan received by the student for the same academic period, the school must make provision for the refund requirements of other forms of financial assistance which the student has received.

(2) Except as may be otherwise provided in 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs), the portion of the refund that is determined to be allocable to the GSLP loan must not be less than the amount derived using the following formula:

$$\frac{\text{Portion of refund allocable to GSLP loan}}{\text{Total refund}} = \frac{\text{Amount of GSLP loan}}{\text{Estimated cost of attendance, as defined in § 177.200}}$$

(c) *Timely payment of refund.* A school shall pay each refund that is due in accordance with the following:

(1) Within 40 days after the date of the student's withdrawal from the school, as determined in accordance with § 177.609(b); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence (see § 177.609(c)), within 40 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, or suspension of operations, or change in ownership, the school or its successors shall make provision for compliance with the requirements of this section with regard to students who obtained loans for periods of attendance at the school prior to the school's change in status.

(20 U.S.C. 1082, 1088f-1(a)(2).)

### § 177.611 Termination of a school's lending eligibility.

(a) *General.* The Commissioner terminates a school's eligibility to make GSLP loans, under the FISLP or a guarantee agency program, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Commissioner terminates a school's eligibility to make GSLP loans if, during each of the two most recent consecutive one-year periods for which data is available, the total amount of loans described in paragraph (b)(1)(i) of this section equals or is greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section.

(i) The original principal amount of loans the school has ever made that went into default.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status, that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination required by this section, the Commissioner considers the status of all loans made by the school, whether the loans are held by the school or a subsequent holder.

(c) *Exception based on hardship.* The Commissioner does not terminate a school's lending eligibility under paragraph (a) of this section if the Commissioner determines that the termination would result in a hardship condition for the school or its students. The Commissioner makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include the following:

(i) Adopting more efficient collection procedures.

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students based on—

(i) the extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a GSLP loan from the school; and

(C) Would not be able to obtain a comparable education at another school.

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area the school serves; and

(B) Would not be available to some students if they could not obtain loans from the school.

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* The Commissioner does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(1) *The termination notice.* An Office of Education official designated by the Commissioner begins a termination action by sending a notice to the school. The notice is sent by certified mail with a return receipt requested. In the notice, the designated official—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the next October 1;

(iii) Informs the school that it has 15 days to do the following—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraph (a) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school should not be terminated.

(2) *If a hearing is not requested.* If the school does not request a hearing but submits written material, the designated official considers that material and notifies the school as to whether the termination action will be taken.

(3) *The hearing.* The designated official schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date that the designated official received the request.

(i) A presiding officer (defined in § 177.701) conducts the hearing.

(ii) The presiding officer considers all written material presented before the hearing and any other material presented during the hearing.

(iii) The presiding officer determines if termination of the school's lending eligibility is warranted.

(4) *Review of a termination of a school's lending eligibility.* The decision of the presiding officer, or of the designated official, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Commissioner.

(e) *Reinstatement of lending eligibility.* (1) A school that has its lending eligibility terminated under this section may not make further GSLP loans unless it has entered into a new lending agreement with the Commissioner under § 177.601.

(2) A new agreement may not take effect until at least one year after a school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes loans to students in attendance at other schools under the same ownership, the Commissioner may make the determinations required by this section by—

(1) Treating all the schools as one; or

(2) Treating each school on a school-by-school basis.

(20 U.S.C. 1082, 1085.)

**§ 177.612 Records, reports, and inspection requirements for participating schools.**

(a) *General.* (1) Each school shall establish and maintain proper administrative and fiscal procedures and all necessary records, as set forth in these regulations and 45 CFR Part 168 (the General Provisions Relating to Student Assistance Programs), in order to—

(i) Protect the rights of students;

(ii) Protect the United States from unreasonable risk of loss due to defaults; and

(iii) Comply with any specific requirements in these regulations and 45 CFR Part 168.

(2) Each school shall submit such reports, as prescribed by the Commissioner, as are necessary to comply with these regulations and 45 CFR Part 168. This requirement includes the timely completion and submission of the Student Confirmation Report (SCR).

(3) When a school becomes aware of a change in the enrollment status of a student who has received a GSLP loan because that student has graduated, withdrawn or ceased to be enrolled at least half-time, the school should report the change directly to the lender if—

(i) The enrollment change is one that would normally be reported on the next SCR; and

(ii) The school does not expect to submit its next SCR to the Commissioner within the next 60 days.

(b) *Loan record requirements.* In addition to records required by 45 CFR Part 168, for each loan received by its students a school shall maintain a record of—

(1) The name of the student borrower;

(2) The name of the lender;

(3) The amount of the loan;

(4) The period for which the loan is intended;

(5) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(6) The amount of tuition and fees paid by the student for that period;

(7) The date the student pays those tuition and fees;

(8) The date the school receives each loan check, if the loan check is disbursed through the school and the school itself is not the lender;

(9) The date the school gives each loan check to the student, unless disbursement is made directly to the student by a lender;

(10) The date the school endorses each loan check, if the school is a co-payee;

(11) The date(s) of disposition of the loan proceeds, if the school is a co-payee and the student endorses the check before the school does; and

(12) A record of the student's job placement, if the school provides employment placement service and the student has used the service.

(c) *Retention requirement for records and reports.*

(1) Unless otherwise directed by the Commissioner, the school shall keep all records required under these regulations for 5 years, following the date a student—

(i) Graduates;

(ii) Withdraws; or

(iii) Fails to enroll on at least a half-time basis for an academic period for which a GSLP loan was received.

(2) Unless otherwise directed by the Commissioner, the school shall also keep, for 5 years after their completion, copies of reports and other forms utilized by the school related to GSLP loans.

(3) In the event of the closure, termination, suspension or change of ownership of a participating school, that school or its successor must make provision for the retention of the records and reports required by these regulations and for access to these records and reports for purposes of paragraph (d) of this section.

(4) Records and reports may be kept on microfilm or computer format.

(d) *Federal audits.* For purposes of audit and examination, the school shall give the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, or any of their duly authorized representatives access to records required by these regulations and by Part 168 and to any other pertinent books, documents, papers and records.

(e) *Non-Federal audits.* (1) The school shall, in conformance with 45 CFR part 168, audit or have audited under its direction, all of the school's GSLP transactions to determine a minimum—

(i) The fiscal integrity of financial transactions and reports; and

(ii) Whether the transactions are in compliance with the applicable laws and regulations.

(2) Audits shall be performed in accordance with the Department of Health, Education, and Welfare's "Audit Guide for the Guaranteed Student Loan Program."

(3) The school shall have an audit performed at least once every two years. Each audit must cover the entire period of time that elapsed since the last audit that was performed.

(4) The school shall submit the audit report to the appropriate regional office of the Department of Health, Education, and Welfare's Audit Agency for review.

(20 U.S.C. 1082, 1083.)

## Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Federal Insured Student Loan Program

**§ 177.700 Purpose and scope.**

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the FISLP. These rules apply to a lender that violates any provision of the FISLP statute or any regulation, special arrangement, agreement, or limitation prescribed under the FISLP.

(b) This subpart does not apply to a determination that an organization fails to meet the definition of "lender" in § 177.200, nor to a school's loss of lending eligibility due to its default experience under § 177.611.

(c) This subpart also does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 45 CFR Parts 80 and 81;

(2) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 45 CFR Part 86; or

(3) The Family Educational Rights and Privacy Act of 1974 (§ 438 of the General Education Provisions Act, as amended) which is governed by 45 CFR Part 99.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.701 Definitions of terms used in this subpart.**

*Designated OE official:* An official of the U.S. Office of Education to whom the Commissioner has delegated the responsibility for initiating and pursuing limitation, suspension, and termination procedures.

*Limitation:* The continuation of a lender's eligibility, subject to compliance with special conditions set

by the Commissioner as a result of a limitation or termination proceeding.

*Presiding officer:* An impartial person who has no prior involvement with the facts giving rise to a limitation, suspension or termination proceeding, and who is selected by the Commissioner to conduct a hearing.

*Suspension:* The removal of a lender's eligibility for a specified period of time or until the lender meets certain requirements.

*Termination:* The removal of a lender's eligibility for an indefinite period of time.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.702 Effect on prior participation.**

Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in § 177.709.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.703 Informal compliance procedure.**

(a) If the Commissioner receives a complaint, or other information that the Commissioner believes to be reliable, indicating that a lender may be violating applicable laws, regulations, special arrangements, agreements, or limitations, the Commissioner may give the lender a reasonable opportunity to—

(1) Respond to the complaint or other information;

(2) Show that the matter has been corrected; or

(3) Submit an acceptable plan to correct the violation and prevent its recurrence.

(b) Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure under paragraph (a) of this section if the Commissioner believes—

(1) The delay would harm the FISLP; or

(2) The informal compliance procedure would not correct the alleged violation.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.704 Emergency action.**

(a) The Commissioner, through a designated OE official, may take emergency action to stop issuing insurance commitments to a lender if the designated OE official—

(1) Receives information, which the official believes to be reliable, that the lender is violating applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government or students; and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures for limitation, suspension, or termination.

(b) The designated OE official begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the reasons for it. The effective date of the action is the date that the notice is mailed.

(c) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that period expires. In that event, the emergency action may be extended until the completion of the proceeding, including any appeal that may be made to the Commissioner.

(d) If a limitation, suspension, or termination proceeding is begun, the Commissioner provides the lender, upon request, an opportunity to demonstrate that the emergency action is unwarranted.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.705 Suspension proceedings.**

(a) *Scope and consequences.* A suspension removes a lender's eligibility under the FISLP for a period of time. That period does not exceed 60 days from the effective date of the suspension unless—

(1) The lender and the designated OE official agree to an extension, if the lender has not requested a hearing; or

(2) The designated OE official begins a limitation or termination proceeding.

(b) *Procedure.* (1) The designated OE official begins a suspension proceeding by sending a notice to the lender by certified mail with return receipt requested. In the notice, the designated OE official—

(i) Informs the lender of the Commissioner's intent to suspend the lender's eligibility, cites the consequences of that action, and identifies the alleged violations on which that action is based;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the suspension will not take effect on the date specified in the notice if the designated OE official receives, at least five days before that date, a request for a hearing or written material showing why the suspension should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the designated OE official considers that material and notifies the lender that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated OE official sets the date and place. The date is at least 15 days after the designated OE official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts the hearing and a written record of the hearing is made.

(5) At the hearing, the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that the suspension is warranted, the presiding officer issues an initial decision suspending the lender's eligibility.

(7) The Commissioner reviews the initial decision of the presiding officer and issues a final decision. The Commissioner adopts the initial decision unless it is clearly unsupported by the evidence.

(c) Notice of the suspension is promptly mailed to the lender. The suspension takes effect either on the date that the initial decision notice is mailed to the lender or on the original proposed effective date stated in the notice of intent, whichever is later.

(d) If the designated OE official begins a limitation or termination proceeding before the suspension period ends, the suspension period may be extended until the completion of that proceeding, including any appeal to the Commissioner.

(20 U.S.C. 1080, 1082, 1088f-1).

**§ 177.706 Limitation or termination proceedings.**

(a) *Scope and consequences.* A limitation or termination either—

(1) Limits in a specified manner the eligibility of a lender to participate in the FISLP; or

(2) Removes the eligibility of a lender to make any new FISLP loans.

(b) *Procedure.* (1) The designated OE official begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested. In the notice, the designated OE official—

(i) Informs the lender of the Commissioner's intent to limit or terminate the lender's eligibility, cites the consequences of that action,

identifies the alleged violations on which that action is based, and in the case of a limitation states the limits which may be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is a least 20 days after the date of mailing of the notice of intent;

(iii) Informs the lender that the limitation or termination will not take effect on the date specified in the notice if the designated OE official receives, at least 5 days before that date, a request for a hearing or written material showing why the limitation or termination should not take place; and

(iv) Asks the lender to voluntarily correct the alleged violation(s).

(2) If the lender does not request a hearing but submits written material the OE official considers that material and notifies the lender that either—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the lender requests a hearing by the time specified in paragraph (b)(1)(iii) of this section the designated OE official sets the date and place. The date is at least 15 days after the designated OE official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing, and a written record of the hearing is made.

(5) At the hearing the presiding officer shall consider any written material presented before the hearing and all other evidence presented during the hearing.

(6) If the presiding officer concludes that limitation or termination is warranted the presiding officer issues an initial decision that limits or terminates the lender's eligibility.

(7) If a termination action is brought against a lender, and the presiding officer believes a limitation to be more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating its eligibility.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated OE official and the lender any time schedule specified in this section may be shortened.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.707 Initial and final decisions.**

(a) The presiding officer issues an initial decision in any limitation, suspension, or termination proceeding based on findings of fact and conclusions of law. The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice. The presiding officer's initial decision is mailed promptly to the lender.

(b) In a suspension proceeding, the Commissioner reviews the presiding officer's initial decision and issues a final decision. The Commissioner adopts the initial decision unless it is clearly unsupported by the evidence.

(c)(1) In a limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Commissioner's final decision 20 days after it is issued unless, within that 20-day period, the lender or designated OE official appeals the decision to the Commissioner.

(2) Within a period of time specified by the Commissioner the appealing party may submit additional written material including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The Commissioner sets a time by which the opposing party shall respond. Any party submitting material to the Commissioner shall provide a copy to each party that participated in the hearing.

(3) The presiding officer's initial decision limiting or terminating the lender's eligibility does not take effect pending the appeal, unless the Commissioner determines that a stay of the effective date would seriously and adversely affect the FISLP or students.

(4) After an appeal the Commissioner issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the Commissioner's decision.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.708 Verification of mailing dates.**

The Office of Education's mailing dates are verified by the original receipts from the U.S. Postal Service.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.709 Effect of suspension or termination proceeding.**

After the effective date of a lender's suspension or termination, the Commissioner does not insure new loans made by that lender. Also, the Commissioner may prohibit the lender from making further disbursements on a loan for which an insurance commitment already has been issued.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.710 Limitation.**

A limitation may include—

(a) A limit on the number or total amount of FISLP loans that a lender may make, purchase, or hold;

(b) A limit on the number or total amount of FISLP loans a lender may make to students at a particular school; and

(c) Other reasonable requirements or conditions.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.711 Reimbursements, refunds, and offsets.**

(a) The Commissioner, designated OE official, or presiding officer may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Commissioner or to designated recipients of any funds that the lender improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) Interest benefits, special allowance, or other claims paid by the Commissioners; or

(2) Required refunds to students, in the case of a school lender.

(c) If a final decision requires a lender to reimburse or make any payment to the Commissioner, the Commissioner may offset these claims against any benefits or claims due the lender.

(20 U.S.C. 1080, 1082, 1088f-1.)

**§ 177.712 Reinstatement after termination.**

(a) A lender whose eligibility has been terminated may file a request for reinstatement of its eligibility. This request may not, however, be filed within 18 months of the effective date of the termination.

(b) The reinstatement request must be in writing and must show that the lender has corrected the violations on which its termination was based and meets all qualifications for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 45 CFR Part 168, General Provisions Relating to Student Assistance Programs, may not be reinstated as a FISLP lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) The Commissioner, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Commissioner denies the lender's request or allows reinstatement subject to limitation(s) the lender, upon request, will be granted an opportunity, including a meeting, to show why it should be fully reinstated.

(2) A lender that is reinstated with limitations may participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f–1.)

**§ 177.713 Removal of limitation.**

(a) A lender may request removal of the Commissioner's limitation imposed under these regulations no sooner than 12 months after the effective date of the limitation.

(b) The request must be in writing and show that the lender has corrected the violations(s) on which the limitation was based.

(c) The Commissioner, within 60 days of receiving the request, either—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) If the Commissioner denies the request or establishes other limitations the lender, upon request, is given an opportunity including a meeting to show why its eligibility should be fully reinstated.

(e) A lender may continue to participate in the FISLP under the limitations pending this appeal.

(20 U.S.C. 1080, 1082, 1088f–1.)

**Appendix A—Summary of Comments and Responses**

**Subpart B—General Provisions**

*Comment.* Numerous comments were received, particularly from guarantee agencies, objecting to the first two sentences of § 177.16, *Forms*, of the NPRM, which specified that the Commissioner may prescribe or approve the forms utilized in various loan transactions, the parties who most complete the forms and the times for transmittal. The commenters felt that Federal control over the operation of State guarantee agency programs through forms control counters Congressional intent to promote strong State programs. They suggested that the information required by the Commissioner be identified to the agencies to be incorporated into the agencies' forms as administratively feasible. Substantive changes in standards and procedures would, however, be submitted to the Commissioner for approval.

*Response.* Since the Commissioner is responsible for the operation of the GSLP, both in the case of the FISLP and the guarantee agency program, the Commissioner feels it important to review all materials which substantially affect the operation of the FISLP and the guarantee agency's program to assure that all applicable Federal laws and regulations are adhered to by GSLP participants. It should be noted, however, that although the entire § 177.16 of the NPRM has been deleted, the final regulations under § 177.408(b)(3) require the agency to submit for the Commissioner's approval its "* * * application forms, promissory notes, regulations, and statements of procedures and standards—including standards for due diligence and timely claims filing—as well as other materials that substantially affect the operation of its loan insurance program * * *." Requirements that lenders under the FISLP use forms prescribed or approved by the Commissioner are included throughout Subpart E of this regulation.

*Comment.* One commenter objected to the requirement under § 177.16 which prohibits a school or a lender, or an agent of either, from asking or permitting a borrower to sign in blank any form used in connection with the operation of the GSLP or a school or lender itself to sign any forms in blank. The commenter stated that it was a common practice for lenders to have a student sign a disclosure statement before the actual disbursement date is known, thus the date when the finance charge begins to accrue is left blank. She, therefore, recommended that the provision which restricts a lender from having a student sign an incomplete form be deleted from the regulations.

*Response.* While the purpose of the disclosure statement is to ensure that the student understands the material terms of the loan, the Commissioner understands the operational problems which would result because of the provision and has, therefore, deleted it from the regulations. In those cases where a borrower has signed a form in blank, it is the lender's responsibility to provide the borrower with a copy of the form, once all the information has been entered on it.

It should also be noted that for Truth-in-lending disclosure requirements, the date the finance charge begins to accrue need not be entered if it is the same date as the date of the transaction.

*§ 177.200 General definitions.*

*Academic year*

*Comment.* Several commenters suggested that the definition be modified to clarify that the calendar year of 12 months may contain more than one academic year of two semesters, two trimesters, or three quarters.

*Response.* The Commissioner sees no reason to modify the definition of academic year in this respect. However, it should be fully understood that a student is eligible for additional loan amounts within the limits established by the law at the completion of each academic year. A calendar year may certainly contain more than one academic year.

*Clock hour*

*Comment.* Some commenters asked for a definition of the term "clock hour" in order to ensure a degree of consistency among schools using clock hours to measure progress.

*Response.* The suggestion has been adopted. It is a standard definition for all Title IV programs.

*Default*

*Comment.* One commenter suggested that the definition be amended to clarify that a default does not include any claims filed as a result of death, disability, or bankruptcy.

*Response.* The Commissioner finds no need to add clarifying language to the definition because both the law and regulations address separately the issues of death, disability, and bankruptcy.

*Comment.* One commenter suggested adding language to clarify the meaning of delinquency.

*Response.* The suggestion has not been adopted. The term "delinquency" is not to be construed as having any other meaning outside the normal usage of the term.

*Disbursement*

*Comment.* One commenter asked when a loan is actually considered disbursed.

*Response.* Clarifying language has been added to the definition to indicate that a loan is disbursed when the check is issued.

*Enrolled*

*Comment.* Some commenters have urged that the term "enrolled" be defined as that date on which registration is completed so that funds might be disbursed to the institution 30 days before the student registers regardless of when actual attendance by the student at the school is required.

*Response.* The Commissioner believes that it is important to leave the definition as it was stated in the proposed regulations (i.e., the date when the student completes the registration requirements and begins the attendance period) to ensure that funds are disbursed to a school at a time reasonably approximate to the beginning of classes. Otherwise, a school might require registration at an early date, well before the start of instruction, in order to have the use of GSLP funds.

*Estimated cost of attendance*

*Comment.* One commenter suggested that, in place of the proposed definition, the definition applicable in the Basic Grant Program regulations be adopted for the GSLP.

*Response.* It would be inappropriate to adopt the definition applicable in the Basic Grant Program regulations because the Basic Grant Program, as a formula program based on an entitlement concept, has as one of its major characteristics a consistent treatment of all applicants regardless of the school a student chooses to attend.

*Estimated financial assistance*

*Comment.* Several commenters felt that Social Security and Veterans' educational benefits should be considered a financial aid source. They argued that there seemed to be no legitimate rationale for allowing Federal dollars to exceed a student's actual need.

*Response.* The Commissioner believes that Social Security and Veteran's educational benefits are benefits to which the student is entitled for services rendered by the borrower or a parent either in the work force or in the military prior to the applicant becoming a student. It should also be noted that, unlike other student assistance

programs, there is no requirement that Social Security and Veterans' benefits be used for payment of educational expenses. The provision has not been changed from the proposed regulations.

*Comment.* Citing the fact that a school will often process a student's loan application prior to the student's receipt of his or her Basic Grant eligibility report, several commenters suggested modifying the definition of estimated financial assistance to permit the financial aid adminstrator to include in its estimate of a student's financial assistance, the aid a student will likely receive, not just that which the student has already been awarded. They explained that the proposed approach would result in many students receiving aid beyond their need, which the aid administrator would have to adjust at a later time.

*Response.* The Commissioner concurs with the commenters' suggestions and the definition has been modified to read, "For the period for which a loan is sought, the estimated amount of assistance that a school is aware a student has been or will be awarded * * *." Any anticipated financial aid included in this item should represent the financial aid administrator's best estimate and should be based on his or her review of a completed needs analysis instrument or on the applicant's prior year's award.

*Full-time student*

*Comment.* One commenter, referring to current regulations of the Veterans' Administration, recommended that the Office of Education revise the definition of full-time student as it applies to vocational school students to address the inconsistent treatment of this subject in Federal regulations among the various student assistance programs. The commenter suggested that current criteria for full-time student status of 18 clock hours per week for theory related coursework and 22 clock hours per week for laboratory or workshop related coursework used by the Veterans' Administration be adopted by the Office of Education. Citing the history of the clock hour requirement, another commenter recommended that since the Office of Education originally adopted the then current Veterans' Administration requirement of 25 clock hours per week in its original definition, consistency of treatment requires that the Office of Education reduce the number of clock hours required to the Veterans' Administration minimum.

*Response.* To be consistent with the other Title IV programs, the Commissioner has decided to change the 25 clock hour per week and 14 semester or quarter hour requirements in the proposed regulations to 24 and 12 respectively. However, the Commissioner does not believe that the action of Congress in reducing the number of hours that a veteran must take in a clock hour program to be considered a full-time student requires a similar change in the GSLP.

Moreover, if the Commissioner reduced the definition of full-time vocational school student to the level included in the Veteran's Educational Benefits Program legislation, the effect would be all encompassing and not limited to a particular class of students.

*Comment.* A few commenters objected to the first sentence in the proposed regulations and suggested that it be deleted. They stated that in order for a student to "secure the degree or certificate * * * in no more than the number of semesters * * *" a student would have to be taking 15 credit hours per semester. The commenters indicated that most schools have used 12 credit hours as the minimum for full-time status.

*Response.* The Commissioner believes the commenter's argument is valid. The sentence in question has been deleted in the final regulations.

*Grace period*

*Comment.* One commenter asked if a lender could shorten or lengthen the grace period once it had been established and entered on the promissory note.

*Response.* The length of the grace period (i.e. whether it is 9, 10, 11 or 12 months in duration) must be determined by the lender or the guarantee agency prior to the time the borrower signs the note. It may, however, be shortened with the borrower's approval.

*Comment.* One lender asked how to calculate the starting date of a borrower's grace period if the school in which the borrower was enrolled provides the month and year but not the day the borrower either withdrew from school or became less than a half-time student.

*Response.* In the absence of other information, if the school provides only the month and year of the student's withdrawal, the lender may use the last day of the month as the date of withdrawal.

*Holder*

*Comment.* Several commenters objected to the inclusion of SLMA but the exclusion of a guarantee agency from the definition of the term "holder" which thereby precludes a guarantee agency from receiving the interest and special allowance benefits afforded other holders.

*Response.* The statute permits the payments of interest and special allowance only to eligible lenders. Although the interest and special allowance may be paid to SLMA because the statute defines it as an "eligible lender" for certain purposes, they may not be paid to a guarantee agency because a guarantee agency is not defined as an eligible lender for any purpose under the statute.

*Lender*

*Comment.* One commenter recommended including in the final regulations a definition of the term "financial aid administrator" as referenced in paragraph (f) which defines an eligible school lender.

*Response.* The recommendation has not been accepted. The Commissioner does not believe it is necessary to define every term used throughout the regulations, rather only those which have a meaning unique to the GSLP.

*Comment.* Two commenters requested that small schools be exempted from what the commenters perceived as a requirement for schools in general to employ a full-time financial aid administrator.

*Response.* The requirement for a full-time financial aid administrator applies only to schools which are also lenders under the GSLP.

*Origination*

*Comment.* Several commenters complained that the definition contained in the NPRM was confusingly written and generally unclear. Another commenter asked that the term "substantial" as used in the definition be explained. One commenter asked whether a guarantee agency or a lender could require a school to perform those functions which are generally performed by the lender before making loans as a condition for making loans to students enrolled at the school. Another commenter recommended that a provision be added to the definition to make it clear that neither a lender nor a guarantee agency could delegate origination responsibilities to a school when in fact no special relationship exists between the two.

*Response.* To eliminate the confusion that the proposed definition stimulated, the list of seven functions contained in the NPRM has been consolidated in the final regulations under paragraph (b). As set forth in the revised definition, a special relationship between a school and a lender (origination) exists: (1) When a school determines who will receive a loan and the amount of the loan; or (2) When the lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

The regulations have not been modified concerning the conditions under which a lender or a guarantee agency may decide to delegate to a school certain functions which are generally performed by the lender before making loans. It should, however, be understood that an origination relationship is one which generally involves the mutual consent of both the lender and the school and which will be mutually beneficial.

*School*

*Comment.* Numerous comments were received objecting to the provision which excludes any school which employs or uses commissioned salespersons who promote guaranteed student loans from participation in the GSLP. One commenter stated that the provision placed undue restriction on a school which employs professional admissions representatives who operate on a monthly salary and receive salary increases or incentive bonuses. That commenter also felt it would be unfair to students who are entitled to know about the various ways a student can finance an education. Other commenters suggested that the provision violates consumer information requirements. Another recommended that the phrase "program information" be deleted.

*Response.* The Commissioner wishes to make it clear that a school is not excluded from participating in the GSLP because it employs commissioned salespersons. It is excluded only if the commissioned salespersons are "promoting the availability of the GSLP" which is defined in the regulations as providing prospective or enrolled students with application forms, or other information designed to encourage persons to finance their education with the GSLP loan. This is a statutory provision. The

provision to a prospective student of a brochure covering all Title IV Federal aid programs is permissible.

*Totally and permanently disabled*

*Comment.* One lender asked what the phrase "unable to engage in any substantial gainful activity" means as used in the definition.

*Response.* The definition calls for a judgment decision as to the borrower's ability to produce income despite his or her disability. This decision will be made under the new regulations by the attending physician who makes the determination as to whether the borrower is totally and permanently disabled. The physician will be assessing the impact of the borrower's handicap on his or her ability to produce income in light of what the borrower would normally be able to do if he or she were not disabled. If the handicap would appear to have a significant adverse effect on the borrower's earning potential for a long and indefinite period of time, then the borrower shall be considered permanently disabled under the definition.

§ *177.201 Eligible Student.*

*Comment.* Concerning the determination of eligibility for a GSLP loan, two commenters objected to paragraph (f) of the NPRM which states, in part, that an applicant who is in default on any GSLP loan would be ineligible for a GSLP loan. The commenters felt that the provision clearly exceeds the law, which under § 497(e) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088f(e)) entitles a student to financial assistance under Title IV provided the student is not in default on "a loan made, insured, or guaranteed by the Commissioner under this title for attendance at such institution" and otherwise meets the statutory and regulatory conditions for eligibility. They recommended changing the provision to comply with the law and also to parallel the other Title IV programs in determining a student's eligibility for financial assistance.

*Response.* While the Commissioner believes that the prior default of a student on any GSLP loan serves as a valid indicator of a student's general attitude on meeting payment obligations of future loans, the regulation has been changed to conform with the statute.

*Comment.* One commenter suggested inserting the word "Defense" between the words "National" and "Direct" when referencing the National Direct Student Loan Program.

*Response.* The suggestion has been adopted to make it clear that a default on a loan received under the National Defense Student Loan Program would also impact on a student's eligibility under the GSLP. Until passage of the Education Amendments of 1972, the National Defense Student Loan Program was under Title II of the National Defense Education Act. The program was then transferred to Title IV of the Higher Education Act to become the National Direct Student Loan Program.

*Comment.* One commenter questioned whether, in a case where a school's criteria for satisfactory progress appeared vague, the lender could substitute its judgment for that of the school in determining the borrower's eligibility.

*Response.* The statute and regulations make clear that the school and not the lender shall determine if a student is making satisfactory progress and thus that he or she is eligible under the program. Nevertheless, a lender is not required to loan funds even though a prospective borrower may be eligible, as long as the lender is not acting in an unlawfully discriminatory manner. Thus, a student could technically be eligible because of satisfactory progress under a school's definition, but a lender might still refuse to loan funds to that student because of the lender's requirement that it would loan only to students who were, for example, maintaining a certain grade point average.

§ *177.202 Permissible charges to students.*

*Comment.* One commenter suggested amending the regulations to permit lenders to pass on to the borrower the fees charged to the lender from a servicing agency or collection agency. Another suggested changing the regulations to allow lenders to charge their borrowers a loan origination fee.

*Response.* The regulations with respect to § 177.202(d) have not been changed as suggested because the Commissioner maintains the position that normal collection costs and costs related to the making of loans are to be paid from the income of the loans which includes interest and special allowance. It should be noted, however, that the regulations do permit a lender to pass on to a borrower certain reasonable costs incurred by the lender or its agent in collecting a loan. These costs are noted in subparagraph (d)(1).

§ *177.203 Affidavit.*

*Comment.* Several commenters inquired as to whether a financial aid administrator who serves as a member of a campus recruiting team would be considered a recruiter and thus be prohibited from signing a borrower's affidavit.

*Response.* A financial aid administrator who serves as a member of a campus recruiting team would not be permitted to sign a borrower's affidavit.

*Comment.* One commenter asked whether a school is required to keep on file a student's signed affidavit made in connection with a GSLP loan.

*Response.* The regulations do not require that a school keep a student's affidavit for a Guaranteed Student Loan on file. While the affidavit is required for all Title IV programs, the affidavit for the GSLP is incorporated on the loan application which is kept by the lender.

§ *177.205 Prohibited transactions.*

*Comment.* One commenter, noting the statement in § 177.14 of the NPRM preamble prohibiting the maintenance of non-interest bearing "compensating balances" with a lender to induce a lender to make loans to the students of a particular school or to any particular category of students or to secure funds for making Guaranteed Student Loans, suggested that the statement be included as a provision in the final regulation because a statement in the preamble alone is unenforceable.

*Response.* The Commissioner concurs with the commenter's suggestion to include the statement on "compensating balances" in the regulations. The regulations have been changed accordingly. Other examples of transactions by or on behalf of a school with a lender which would violate this section have also been listed.

*Comment.* Referring to the provision which exempts SLMA from the prohibition against the purchase of notes from a school lender at discount, one commenter questioned whether OE did not also wish to exempt SLMA from the provision that prohibits a school from pledging a GSLP loan as security for a loan from SLMA bearing aggregate interest and other charges in excess of the sum of the maximum rate of interest authorized plus the rate of the then most recently prescribed special allowance.

*Response.* Language has been added to the provision concerning the pledging of GSLP loans to exempt SLMA as well as an agency of a State functioning as a secondary market. Other circumstances as approved by the Commissioner may also be exempted from the provision.

**Subpart C—Federal Payments of Interest and Special Allowance**

§ *177.300 Payment of interest benefits.*

*Comment.* Several commenters disagreed with the definition of the beginning of the repayment period. It was suggested that the regulations be changed to indicate that the repayment period would begin on the first day following the expiration of the grace period in order to be consistent with the terms of the promissory note and to avoid the problem of the Commissioner paying interest for a period in which the borrower is obligated to pay.

*Response.* The Commissioner agrees with these comments. Changes in the regulations have been made accordingly.

§ *177.301 Special allowance payments to lenders.*

*Comment.* Two commenters recommended that for purposes of billing for special allowance, the definition of what loans would be considered outstanding not be made contingent upon a claim approval date from the Commissioner. The commenters said that they have no way of knowing the date on which a claim is approved. Therefore, they suggested that the regulations read "the loan is outstanding until the claim payment is received by the lender."

*Response.* The suggestion has been adopted. The regulations state that a loan is considered outstanding if—

(i) The borrower has not repaid the loan; and

(ii) The lender has not received payment on a claim for loss on the loan; and

(iii) The lender has not received a final refusal notice on a claim for loss on the loan, from the Commissioner or from a guarantee agency.

*§ 177.302 Payment of interest benefits and special allowance to a lender that makes multiple installment loans.*

*Comment.* Several commenters stated that the term "total consumer loan portfolio" which was used in the proposed regulations is not a standard term generally used by the banking industry. They suggested, therefore, that the term "total assets" be used instead of "total consumer loan portfolio" and the level of participation requirement be changed to read "one-fourth of 1 percent or more of its total assets or $100,000, whichever is less."

*Response.* Since such a percentage of total assets should represent "a substantial volume" of loans as required by the statute, the Commissioner accepts both suggested changes.

*Comment.* One commenter suggested that the requirement under the proposed regulations that a lender must have been making loans under this part for at least 1 year in order to be eligible to receive special interest payments would deter new lenders from entering the program. Other commenters suggested that the requirement be changed from 1 year to 1 fiscal quarter.

*Response.* The statute requires that a lender have "sufficient experience and administrative capability in processing such loans" before it may be approved as an eligible lender for purposes of the special allowance and interest payment for approved multiple installment loans. Although some commenters have suggested that 1 fiscal quarter is sufficient time to gain such experience, the Commissioner feels that a longer period is necessary. Taking the comments into account, the Commissioner has decided that 6 months as opposed to 1 year should be sufficient. The provision has been changed accordingly.

*Comment.* One commenter thought that the proposed requirement that a lender must disburse multiple installment loans so that the interval between the first and second installment was at least one-third of the enrollment period might cause some problems for the students. The major concern was that a student who had received a late first installment disbursement would also receive the second installment late. This would cause the student a problem if tuition or other fees were due for the next semester.

*Response.* The Commissioner recognizes the potential problems involved in regulating the timing of installment disbursements. Therefore, a provision has been added to § 177.302(c) that allows a lender to disburse funds sooner than in an interval one-third the enrollment period, if the lender determines that the needs of the student would be adversely affected.

*Comment.* One commenter has questioned when the special interest payment for an approved multiple installment loan would cease if a student were to withdraw from school before receiving the total amount of the loan.

*Response.* Section 177.302(d) now specifies that the Commissioner's obligation to pay special interest benefits and special allowance on the undisbursed portion of a multiply disbursed loan terminates on the date that the lender determines that the student is no longer maintaining at least half-time status or no longer requiring the undisbursed loan funds.

*Comment.* One commenter has questioned why educational institutions which serve as lenders and State agency lenders have been excluded from the provision allowing special allowance and interest payments on multiply disbursed loans.

*Response.* The limitation in the regulations is derived directly from the statute.

*§ 177.303 Penalty interest payments to lenders.*

*Comment.* Several commenters objected to wording in the proposed regulations which sets penalty interest payments to begin if payment of special allowance and interest benefits are "not authorized by the Commissioner" within 30 days and sets the final day for which penalty interest can be paid as the date "the Commissioner authorizes payment." The commenter contended that penalty interest should accrue until payment is actually made and that the Commissioner could escape ever having to pay penalty interest by always authorizing, but not actually paying, the special allowance and interest benefits within the 30 days.

*Response.* The Commissioner always acts in good faith in determining whether payments of special allowance and interest benefits made to lenders have been made on time. For purposes of making this determination, the date on which payment is authorized must be used since this is the only date over which the Commissioner has any control. Checks for payment are issued by the Treasury Department. The Commissioner has no way to determine in advance when a check will be issued.

In regard to the final date used for calculating how much penalty interest is due, § 438(b)(4) of the Act specifies that this date is the date on which the Commissioner authorizes payment.

*Other Changes*

The section entitled *Administrative cost allowance to lenders*, that appeared in the proposed rules as § 177.26 has been deleted from the final published rules due to its limited applicability. This allowance, which could not exceed 1 percent, applied only to loans made prior to 1970 in nine states. The individual lenders are aware of this payment, but discussion of it in the regulations has caused much confusion over the years. Lenders holding loans that qualify for this payment will still receive it.

**Subpart D—Guarantee Agency Programs**

*General*

Two subjects that received many comments from guarantee agencies and others are the requirement that standards for due diligence and timely claims filing be comparable to the due diligence and timely filing standards of the FISLP, and the timing of federal payments to and from the guarantee agency.

*Comment.* Many commenters objected to the requirement that guarantee agencies adopt the FISLP standards for due diligence in making, servicing and collecting loans and for timely filing of claims, or adopt "comparable" standards. The commenters argued that the guarantee agency should be allowed to develop its own standards, tailored to the needs and characteristics of its program. Several commenters stated that, for example, because a guarantee agency wants to prevent defaults, the agency may allow lenders to attempt collection on an account for longer than the FISLP regulations would allow.

*Response.* The Commissioner concurs with these comments. Section 177.401(c) requires that the guarantee agency establish "administrative and fiscal procedures" as required by the Commissioner, that the guarantee agency "establish and disseminate" standards for due diligence and timely filing of claims, and that the agency assure that due diligence is exercised by lenders and by the agency itself. These standards and procedures must be submitted to the Commissioner for approval, under § 177.408(b)(3). The requirement that these procedures be the same as, or comparable to, FISLP standards has been deleted. The Act defines "due diligence" as requiring "collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans." The FISLP standards are designed to be procedures that can be applied fairly and on a nationwide basis to commercial and noncommercial lenders. In evaluating the sufficiency of the guarantee agency standards, the Commissioner will use the FISLP standards (§§ 177.509, 177.510, and 177.511) as a guide. However, where the guarantee agency demonstrates that the characteristics of its program warrant other procedures the Commissioner will approve those procedures. The Commissioner believes that these regulations will assure that due diligence is exercised in all guarantee agency programs, while allowing program flexibility.

*Comment.* Many commenters objected to regulations requiring payment to the Commissioner within 60 days of the "Commissioner's equitable share" of borrower payments, while there is no time requirement for the Commissioner's payment to a guarantee agency of reinsurance and administrative cost allowances.

The commenters felt that guarantee agencies would suffer financial hardship if they were forced to turn over a portion of their receipts from borrowers on a regular basis, but could not count on regular payments from the Commissioner.

The commenters recommended that the Commissioner be obligated to make "timely" payments, preferably monthly, but no less often than quarterly. In addition, several commenters recommended that the administrative cost allowances owed the agency be set off against the "Commissioner's equitable share" owed by the agency.

*Response.* The Commissioner is continuing to require that the "Commissioner's equitable share" of borrower payments be submitted within 60 days. In the past, some agencies waited months, and even years, before submitting the Commissioner's equitable share of borrower payments. These funds are returned by the Commissioner to the fund from which default and reinsurance claims are paid, and so reduce appropriations

needed. The Commissioner believes this requirement is necessary for prudent management of Federal funds.

The Commissioner intends to make reinsurance payments on a timely basis, and has established a system for paying the administrative cost allowances on a quarterly basis to the extent possible. However, since these allowances must be adjusted based on the availability of funds, it is not always possible to maintain a quarterly schedule. The reinsurance payments and the administrative cost allowances are appropriated and accounted for separately. It is not administratively feasible to offset amounts in one account by amounts in the other. The Commissioner recognizes that there may occasionally be circumstances which would justify the guarantee agency's retaining the "Commissioner's equitable share" for a longer period (for example, if the Commissioner is unable to make reinsurance payments for so long a period that the agency's reserve fund is threatened). In that case, these regulations provide an exemption to the 60-day requirement, if the Commissioner approves.

*§ 177.400 Agreements between a guarantee agency and the Commissioner.*

*Comment.* Several commenters felt that the provision in § 177.400 (c) and (d) allowing the Commissioner to terminate an agreement or require remedial action by a guarantee agency was too broad. These commenters were of the opinion that the Commissioner should afford the guarantee agency the opportunities described in § 440 of the General Education Provisions Act (Administrative Hearings) before withholding payments to the agencies. The Commissioner's authority to suspend payments to guarantee agencies without these opportunities would, they believed, weaken the agency's guarantee of repayment for defaulted loans and thereby reduce the value of the guarantee to the point where lender participation would suffer.

*Response.* Section 177.400(d) clarifies that the Commissioner gives the guarantee agency reasonable notice of an intention to terminate or suspend an agreement, to require reimbursement or to withhold payments, as well as an opportunity for a hearing before such actions become final. Further, paragraph (d) provides that the Commissioner only withholds payments or suspends an agreement prior to giving notice and opportunity for a hearing if the Commissioner determines that this emergency action is necessary to "prevent substantial harm to Federal interests." The Commissioner believes that these provisions provide adequate protection for the guarantee agency, while giving the Commissioner the authority to protect Federal interests in an emergency. The commissioner believes that the circumstances in which the Commissioner withholds payments are so limited that they will not affect the value of the guarantee agency's insurance.

*§ 177.401 Basic agreement.*

*Comment.* Several commenters suggested, in the discussion of annual loan amounts, changing "$2,500 to a student who has not successfully completed a program of undergraduate education . . . during any 12-month school period . . ." to "$2,500 to a student who has not successfully completed a program of undergraduate education . . . within any single academic year . . .", to be consistent with the language of the Act.

*Response.* The Commissioner agrees that the wording in the NPRM was confusing. The discussion of the annual loan maximum has been rewritten to clarify that, in determining a student's eligibility for the maximum amount for an academic year, the guarantee agency may define an academic year as a period of time of up to 12 months, or as the period of time it takes a student to advance in academic standing (for example, from freshman to sophomore).

*Comment.* Commenters requested clarification of the provision that a student who is enrolling for the first time in his or her first academic year of undergraduate study, and who is receiving a loan that is made or originated by a school, must receive the loan in two or more installments, if it exceeds $1,500 per year. The regulations require that at least one-third of the period for which the loan was intended elapse between the first and the second installment. The commenters asked how this provision would affect a student who applied for a $2,000 loan late in the first semester to cover expenses for both the first and second semesters.

*Response.* In the commenter's example, the lender is required to make two disbursements. If the academic year is nine months, the disbursements must be at least three months apart.

*Comment.* Several commenters pointed out that the multiple-disbursement requirement for "loans in excess of $1,500 for *any* academic year" in § 177.33(a)(1)(iv) of the NPRM conflicted with § 428(b)(1)(A)(ii) of the Act, which referred to a loan "to such a first year student."

*Response.* The wording of § 177.401(b)(3)(ii) now clarifies that this provision covers only first year students who have never enrolled for any undergraduate study before.

*Comment.* One commenter complained that the regulations require that guarantee agency borrowers report address changes, while FISLP borrowers are required to report changes in address and student status. The commenter recommended that the requirements be identical for both programs. Another commenter criticized the regulations' lack of procedures by which the student should notify the lender of an address change. This commenter felt that requiring students to report their status was an unreliable procedure and that defaults could better be prevented by a regulation requiring borrower interviews with the lender.

*Response.* Section 177.401 lists the characteristics that a guarantee agency program must have, at a minimum, to enter into a basic agreement. The agency must assure through its own regulations and its agreements with lenders and schools that the requirements of this section are met.

The requirement that the borrower notify the lender of an address change is derived directly from the Act (§ 428(b)(1)(P)). The guarantee agency or individual lender may develop procedures for this notification if it wishes. The guarantee agency or a lender may also require borrower interviews to discuss the terms of the loan. The guarantee agency may add student status changes to the notification requirement, as the Commissioner has done in the FISLP.

*Comment.* One commenter objected to the requirement that a student's consent be obtained before making the school a joint payee on a GSLP check. The commenter recommended giving the lender the option of requiring that the school be a joint payee, or permitting the school to require that it be made a joint payee as a prerequisite for its cooperation in processing the loan. The commenter pointed out that a student planning to misuse the loan funds for noneducational costs would simply withhold his or her consent to the school's being a joint payee.

*Response.* The Commissioner believes that it is necessary to require that GSLP checks be made jointly payable to the school and the borrower only if the borrower consents. Since the loan is made solely to the student, his or her consent is necessary for any disposition of the funds. However, a lender need not make a loan to a borrower who refuses to consent to joint payment.

*Comment.* A commenter feared that schools would require joint payment in exchange for their cooperation in loan processing and this would result in program abuse.

*Response.* The lender, not the school, makes the decision on whether to require joint payment. It seems unlikely that a school would refuse to cooperate in processing loan applications, since that school would prevent its students from obtaining loans. There are specific rules for the school's handling of GSLP checks designed to prevent abuse by the school. For example, the school may retain loan funds to cover tuition, fees or other charges owed by the student, but must immediately turn over the remaining funds to the student once the check is cashed.

*Comment.* Several commenters objected to the requirement that the guarantee agency loans be disbursed according to FISLP requirements. They believed that this limited the agency's flexibility in meeting local situations. The commenters particularly objected to the prohibition on loans being disbursed more than 30 days before enrollment, stating that this would cause cash-flow problems for students and schools.

*Response.* The Commissioner concurs, and the guarantee agency programs no longer are required to meet FISLP disbursement requirements. Section 177.401(b)(6) includes only those disbursement requirements that are mandated for guarantee agency loans. The prohibition on disbursement more than 30 days before enrollment has been deleted, as well as the additional limitations on school-lender disbursement. The statutory provisions relating to disbursing funds by check requiring the borrower's endorsement are included in this paragraph.

*Comment.* Commenters suggested for simplicity and standardization that the guarantor, rather than the lender, give the school the required notification that one of its students has received a GSLP loan. This would result in, at most, one form per State

coming to a school rather than a multiplicity of forms if the lender notifies the school. Commenters suggested that, if the guarantor gives the notice, it would be easier for the guarantee agency to notify within 30 days of the commitment than of the disbursement. They suggested that notice of commitment would be more useful to the school than notice of disbursement.

*Response.* This recommendation was not adopted. The Act provides that the guarantee agency can choose whether to notify the school itself or to require that the lender notify the school. However, the Commissioner believes that the school must be notified of loans on which a disbursement, rather than a loan insurance commitment, has been made. The school will use this notice to create a list of GSLP borrowers whose status it must track until the borrower leaves school. This list should not include a student who may never have received the loan or never enrolled.

*Comment.* Several commenters requested clarification of the borrower's and lender's rights in setting the repayment schedule. Also, commenters pointed out that the wording "if . . . the borrower requests" a repayment schedule shorter than authorized by the Act, "the lender may agree. . . ." is significantly different from the wording used in § 428(b)(1)(E)(ii) of the Act. The commenters suggested following the wording of the Act ". . . if the borrower and lender agree. . . ."

*Response.* Section 177.401(b) has been revised to clarify repayment requirements. Paragraph (b)(8)(iii) provides that a borrower "may request and be granted" a grace period shorter than that specified on the promissory note. Paragraph (b)(9)(iii) provides that the borrower "may request and be granted" a repayment period of less than 5 years. The Commissioner believes that these sentences clearly convey that the student has the option of *requesting* a shorter repayment period, but that the lender need not grant the request. However, the lender must accept any prepayment the borrower makes, under paragraph (b)(9)(iv). Paragraphs (b) (8) and (9) also clarify that the borrower who requests a grace period shorter than that in the promissory note gives up the right to the remaining grace period, but a borrower always may reassert the right to a minimum repayment period of five years. The Commissioner believes that § 177.401(b) now contains a clear statement of the borrower's and lender's rights in establishing a repayment schedule.

*Comment.* One commenter complained that it was unclear how a married couple, under the provision allowing a couple when both spouses have loans to pay a minimum of $360 per year together, could have their loan payments consolidated unless a single bank owned the loans of each borrower. This commenter also felt that it was unrealistic to require borrowers to stay within the same maximum repayment period even though the conditions justifying deferment have increased and the amounts of loans that a student can obtain have increased.

*Response.* Paragraph (b)(9)(v) provides that the borrower's, or both spouses', repayment to all holders of their loans must be at least $360 per year. This provision does not mean that the loans must be consolidated. It means that the lender(s), in determining the minimum annual repayment, must take into account all the borrowers' GSLP loans. However, it should be noted that most borrowers, unless they have relatively small amounts outstanding, will have to pay more than $360 a year to repay these loans within the 10-year maximum repayment period.

*Comment.* Commenters stated that the guarantee agencies, working with their lenders, should be permitted to establish their own procedures for determining whether or not students are eligible for an unemployment deferment, rather than having to comply with the onerous requirements of the FISLP. Commenters objected that operations will slow down as they have for disability determinations.

*Response.* The section covering deferment of repayment now is limited to a cross-reference to the identical requirements for the FISLP. The Act provides that deferment must be granted to borrowers who qualify under the law. The Commissioner believes that this provision can only be carried out equitably if identical deferment regulations apply to all GSLP borrowers.

*Comment.* A commenter suggested that lenders be prohibited from collecting the insurance premium amount from the student before the loan is disbursed, because prepayment of the premium may be burdensome to the borrower.

*Response.* The Commissioner prefers to leave policy in this area to the discretion of the guarantee agencies. In view of the relatively small amount of most insurance premiums, and the short time period between the time the borrower would need to pay the premium and the disbursement of the loan, it would not seem to be burdensome to the borrower.

*Comment.* A commenter objected to the requirement that an insurance premium may not be charged on interest charges that have been capitalized, even though such items are allowed to earn interest. The commenter questioned this distinction, and suggested that use of different principal amounts for different purposes would be confusing.

*Response.* The insurance premium is to be charged on the amount disbursed. Since capitalized interest does not represent any new disbursement to the student, the insurance premium may not be charged on that amount.

*§ 177.402 Death, disability, and bankruptcy payments.*

*Comment.* One commenter objected to the NPRM prohibition against collecting from a borrower whose loan had been discharged in bankruptcy, unless the borower had reaffirmed the debt. This provision appeared in the section of the NPRM dealing with program requirements for receiving supplemental reinsurance, and in the section on bankruptcy payments. The commenter felt that the regulations prevented the lender or guarantor from accepting voluntary payments submitted by the borrower.

*Response.* The language of the NPRM was not intended to preclude a lender or guarantee agency from receiving payments submitted voluntarily by a borrower whose loan had been discharged in bankruptcy. The provision merely prohibited the holder of the loan from engaging in collection activity against such a borrower. This meaning is now clarified in § 177.402(c) (and the cross-reference to § 177.514(c)) and in § 177.402(f)(2).

*Comment.* A commenter recommended that, when a borrower is adjudicated a bankrupt, the guarantee agency assign the loan to the Commissioner. This would allow the Commissioner to utilize Federal attorneys to handle these cases. The commenter felt that, as Federal claims, bankruptcy courts would be less willing to discharge the debt. Also, the commenter stated that certain guarantee agencies have been told by Federal courts that once reinsurance is collected, there is no guarantee agency interest on which to base an objection.

*Response.* There is no statuory provision allowing the guarantee agency to assign a loan to the Commissioner. Also, assignment of the claim to the Commissioner after the adjudication in bankruptcy would not prevent the claim from being discharged.

*Comment.* Commenters complained that the Commissioner's procedures for determining whether a borrower is totally and permanently disabled are too slow.

*Response.* The procedures for determining disability have been changed to meet this criticism. The changes are discussed under § 177.514.

*Comment.* Several commenters recommended changing the provision that allows the Commissioner to pay a death, disability, or bankruptcy claim to a guarantee agency if the agency has paid a default claim and if the death, disability, or bankruptcy occurs within 15 years of the date the loan was made. The commenters recommended that the provision should exclude periods of authorized deferment and forbearance.

*Response.* The Commissioner concurs. Section 177.402(f)(1)(i) includes this provision.

*Comment.* Commenters suggested that, when a guarantee agency receives a payment from a borrower who has been adjudicated a bankrupt, the agency be allowed to retain as much of that payment as it could retain of default payments. The commenters stated that bankruptcies were expensive cases to handle, and that it would be simpler to handle all types of payments alike. Further, there would be no incentive for the agency to otherwise object to bankruptcy discharge.

*Response.* Bankruptcy claims are not paid under reinsurance provisions and are not subject to the same provisions for retention by the guarantee agency of a percentage of the payments. Since the Commissioner pays 100 percent of the loss on a bankruptcy claim, the agency must submit 100 percent of any subsequent payments from the borrower to the Commissioner.

*Comment.* A commenter requested that the provision that the Commissioner will not pay a death, disability, or bankruptcy claim if it is "no longer considered insurable by the guarantee agency" should include a discussion of conditions under which the agency would consider a loan uninsured for the lenders' benefit.

*Response.* The Commissioner believes that it is appropriate for the guarantee agency,

rather than the Commissioner, to provide this guidance to lenders. Section 177.517(c) provides guidance on this subject for FISLP lenders.

*§ 177.403 Federal advances for reserve fund.*

*Comment.* A guarantee agency reserve fund is money held by the agency to back up its loan guarantees. The ratio of the amount in the fund to the amount guaranteed may be set by State law or by agreement between the guarantee agency and its participating lenders. The NPRM and current regulations require that the guarantee capacity of the reserve fund be 75 percent encumbered before an advance may be made under this section. The NPRM provided an exception for one advance of $50,000 to be made to new agencies. The "guarantee capacity" is the dollar amount of loans the agency can insure, based on the amount in the reserve fund. The percentage of the guarantee capacity that is earmarked to back outstanding loans is said to be "encumbered." Several commenters suggested deleting the requirement that the reserve fund be 75 percent encumbered before the Commissioner makes a reserve fund advance under § 177.403. Other commenters suggested that this requirement be waived for new agencies for the first five years of operation, to be consistent with the time limit for other benefits for new guarantee agencies. A commenter said, "the figures are arbitrary and have no relation to required fund liquidity necessary for timely payment of defaults, periodic delay of the Commissioner in making reinsurance payments, or the actual default losses which have or may occur." Commenters also suggested that agencies who had stopped carrying on an active program prior to September 30, 1976 but subsequently re-established their programs should be treated as new agencies for purposes of receiving an initial advance.

*Response.* The Commissioner concurs, in general, with these suggestions. The purpose of the 75 percent encumbrance requirement, established by regulation in 1970, was to assure that any new advance made would be used to support additional lending. However, the requirement makes it nearly impossible for an established guarantee agency to receive an advance, even though it may be able to demonstrate that it needs the advance to meet the demand for loans. New or re-established agencies may need a larger advance than $50,000 at the beginning of their operation, even though they cannot meet the encumbrance requirement. The Commissioner believes that the requirement is out-dated.

Section 177.403 now requires that an agency, to receive an advance, demonstrate that it needs the funds in order to meet a demand for loan insurance. A new or re-established agency may receive an advance for the first two years of its operation without this demonstration.

*Comment.* The NPRM required that the guarantee agency's reserve fund be invested only in a manner first approved by the Commissioner. Several commenters questioned whether the Commissioner could provide the timely approval essential to the efficiency of an agency's investment program.

*Response.* This requirement has been revised. Section 177.403(f)(4) now establishes a standard for the type of investments that may be made with the fund but does not require the Commissioner's approval on specific investments.

*Comment.* Commenters objected to the provision in this section and § 177.202(b) that "premiums may not be retained by the lender to cover the costs of making a loan or for any other purpose." The commenters felt that this provision would prevent guarantee agencies from providing a "participation subsidy" to a lender through a set-off procedure as some agencies want to do.

*Response.* The prohibition against a lender retaining the insurance premium does not mean that a guarantee agency cannot pay a "participation subsidy." The subsidy may be handled by an accounting transaction which allows the lender to set off the subsidy it is due from insurance premiums it owes to the guarantee agency. However, the subsidy must be paid from State appropriations or other funds. There must be a clear audit trail that proves that the source of the subsidy is not the insurance premiums.

*§ 177.405 Federal reinsurance agreement.*

*Comment.* Several commenters found the definition of "losses" in the NPRM inconsistent with the provisions for bankruptcy claims. They felt that the word "discharged" should be replaced with "adjudicated" in that definition.

*Response.* Section 177.405(a) now states that "losses" are the amount paid for a default claim minus payments made by the borrower before the Commissioner reimburses the guarantee agency. Claims paid because of the borrower's death, total and permanent disability, or adjudication as a bankrupt are excluded from the reinsurance agreement.

*Comment.* Section 177.36(b) of the NPRM stated that the Commissioner would not enter into a reinsurance agreement unless satisfied that the reinsurance met any requirements regarding maintenance of reserve funds. This section also stated that the Commissioner, in considering whether to enter into an agreement, may review aspects of the guarantee agency in which there is a Federal interest. Commenters suggested that if this regulation was meant to apply to states that have existing reinsurance agreements, the Commissioner should follow procedures similar to those of § 440 of the General Education Provisions Act (Administrative Hearings) prior to a decision not to enter into a reinsurance agreement.

*Response.* The Commissioner does not intend to require existing agencies to renegotiate reinsurance agreements when these regulations become effective, since the agreements are subject to changes in the law or regulations.

*Comment.* Several commenters supported the improved language of the provision requiring that "when a borrower's repayment schedule requires . . . payments that are insufficient to pay the accruing interest . . ." the guarantor should, if possible, adjust the payments so the borrower can repay the principal within a reasonable time. Previous policy required that this always be done. Other commenters, however, objected to giving "preferential treatment" to defaulters and "discriminating against borrowers who discharge their obligations properly and in full."

*Response.* The Commissioner does not regard this provision as discrimination against non-defaulters. Once a borrower has agreed to repay a guarantee agency for his or her defaulted loan, no legitimate purpose is served by crediting such a large portion of each payment to accrued interest that the borrower makes no progress in repaying the loan. The Commissioner recognizes that redistributing the payments between principal and interest is not always possible or desirable, and is requiring only that it be done "if feasible."

*Comment.* Several commenters objected to the provision that overhead, which is excluded from the guarantee agency's administrative costs, includes space and utilities. The commenters cited a Webster's Dictionary definition of overhead: "a business expense not chargeable to a particular part of the work or product." These commenters felt that the Commissioner thus was not allowing States to receive the full benefits provided by the Act. They suggested that reference to "space and utilities" be deleted.

*Response.* The Commissioner believes that overhead is generally acknowledged to include space and utilities costs and therefore the Commissioner continues to list those costs as examples of overhead in these regulations.

*Comment.* Many commenters objected to the determination of the agency's "amount equal to the administrative costs of collection of loans . . . and the administrative costs of pre-claim assistance" through a ratio based on the past year's costs and collections. Commenters stated that this would eliminate much of the incentive to increase collections. They felt that the Commissioner had no authority to arbitrarily limit the amount to be retained by the guarantee agency. The commenters suggested that discussion of such a ratio be deleted.

*Response.* The Commissioner concurs. Sections 177.405(g) and 177.406(c)(3) now provide that a guarantee agency may retain up to 30 percent of each borrower payment as the amount equal to the administrative costs of collection of loans and pre-claim assistance for default prevention. If for a complete fiscal year an agency retains a larger amount than that to which it is entitled the agency must submit the excess it retained to the Commissioner by December 31, of the next fiscal year.

*§ 177.406 Supplemental Federal reinsurance.*

*Comment.* Several commenters suggested rewording § 177.37(b)(1) of the NPRM ("If, for any fiscal year, the amount of payments made by the Commissioner under § 177.36 or this section for losses subject to reinsurance exceeds * * *") to read "If, for any fiscal year, the amount of such reimbursement payments made by the Commissioner under § 177.36 or this section. * * *" The commenters felt that the wording of the NPRM might cause confusion over whether the "default

experience" percentage was based on reinsurance payments by the Commissioner or on amounts paid by the guarantee agency to lenders.

*Response.* The "default experience" percentage is based on amounts of reinsurance paid by the Commissioner. Section 177.406(b)(1) has been reworded to clarify this, and now refers specifically to "reinsurance claims paid."

*Comment.* Commenters objected to the provision that, to be eligible for supplemental reinsurance, an agency may only exclude from its program a school eligible under FISLP criteria if the school's eligibility has been limited, suspended, or terminated by the Commissioner under 45 CFR Part 168 (General Provisions Relating to Student Assistance Programs) or under comparable guarantee agency standards. The commenters' objection was that this was inconsistent with the Act, which they interpreted as allowing a school to participate unless the school had lost its eligibility entirely. The commenters made a similar point about the eligibility of school lenders.

*Response.* Section 428A(a)(1)(E) of the Act provides that no eligibility restrictions be placed on a school under the State insurance program that are more onerous than the school eligibility requirements under the FISLP unless that school has been made "ineligible under regulations for the limitation, suspension, or termination of eligible institutions." Similarly, 428A(a)(1)(E) refers to an institution "eliminated as the lender under regulations for the limitation, suspension, or termination of eligible institutions." Therefore, the Commissioner believes that § 177.406(d) (4) and (6) are consistent with the Act.

*§ 177.407 Administrative cost allowances for guarantee agencies.*

*Comment.* Commenters objected to the provision that the Commissioner makes administrative cost allowance payments at such times as he or she may prescribe. A commenter stated that because the guarantee agencies need these administrative cost allowances to operate their programs, this uncertainty of payment is of concern to them. The commenters suggested that the Commissioner consider advance payments.

*Response.* The Commissioner concurs with the suggestion that the payments be made in advance and is attempting to develop a method for paying at least part of each year's allowances in advance. The Commissioner has established a system for quarterly payment of the administrative cost allowances. However, because these allowances can only be paid to the extent that funds are appropriated by Congress each year, strict adherence to this schedule is not always possible. Since proration of funds may be required in some quarters, payment of the allowance to any agency cannot occur until all agencies have submitted documentation of the amount for which they are eligible.

*Comment.* One commenter recommended that the date for submission of the guarantee agency applications for the administrative cost allowance be changed from January 1 to April 1 of each fiscal year in which the allowance is requested. If appropriations were insufficient to pay the full administrative cost allowance due each agency, an adjustment could be made at that time.

*Response.* Since the Commissioner will attempt to pay a portion of the allowance in advance the Commissioner believes it is necessary to receive the application by January of each year.

*Comment.* One commenter asked whether, to receive any allowance, the agency must have incurred all three types of administrative costs (for promotion of commercial lender participation, collection of loans, and pre-claim assistance for default prevention).

*Response.* The guarantee agency must have incurred all three types of costs to receive any primary allowance payments, except that new guarantee agencies are partially exempt from this requirement for a limited amount of time under § 177.407(b)(2)(ii). Also, if the guarantee agency spends less than the minimum percentage for any category, payment for all other categories is reduced proportionately, so that the statutory ratio between the three types of costs is maintained.

*Comment.* Three commenters requested that the requirement of an annual audit of the guarantee agency's administrative costs be changed to accommodate an agency subject to audit by a State agency. Such a guarantee agency could not assure that the audit would be performed yearly, and might otherwise be required to pay for an audit in addition to the State audit.

*Response.* The Commissioner has revised this requirement to require a State guarantee agency that is subject to State audit procedures not under its control to have an audit at least every two years.

*§ 177.408 Records, reports, and inspection requirements for guarantee agency programs.*

*Comment.* Several commenters suggested that guarantee agencies and lenders should not be required to keep loan documents for more than 25 months, as required by the Equal Credit Opportunity Act, after the loan has been paid in full. They point out that the loans are already held for a long period from loan disbursement to payment in full.

*Response.* The General Education Provisions Act, § 434(a) (20 U.S.C. 1232c), requires that GSLP loan records be retained for 5 years after payment in full. The Commissioner believes that the 5-year record retention requirement is necessary. Experience with past fraud or abuse has shown that loans may have been made by a particular lender or for students at a particular school for many years before allegations of abuse first come to the Commissioner's attention. At that time, it is necessary to review loans made throughout the history of the lender or school. For this reason the Commissioner believes that the requirement must be retained. This 5-year retention requirement is consistent with that for other O.E. financial aid programs.

*Comment.* One commenter suggested that there be a retention requirement for cancelled or rejected loans.

*Response.* Since such records are not likely to be a significant part of an audit or a fraud or abuse investigation, the Commissioner has not adopted the suggested requirement.

*Comment.* Commenters stated that the Commissioner has long enough to review records during the required retention period and should not be allowed to require additional retention in certain areas.

*Response.* If the Commissioner believes that an investigation may require retention of the records for a longer period the Commissioner must have the authority to order their retention.

*Comment.* Many commenters objected to the requirement that the guarantee agency submit to the Commissioner for prior approval its forms, procedures, and other material which affect the operation of its program. The commenters felt that this requirement would limit a guarantee agency's flexibility, and displayed a distrust of guarantee agencies. They also felt that O.E. would not be able to respond promptly.

*Response.* The Commissioner is responsible for the operation of the GSLP, whether in the case of the FISLP or a guarantee agency program. The Commissioner has the final responsibility for assuring that all applicable Federal laws and regulations are adhered to by GSLP participants. Experience has shown that guarantee agencies or lenders may develop materials that they believe conform to existing requirements when in fact the materials are in violation of law or regulations. This is often due to the complex nature of the GSLP, not an attempt to ignore the law or regulations. However, the Commissioner believes that it is necessary to review the loan applications, promissory notes, regulations, statements of procedures and standards, and all other materials which substantially affect the operation of the guarantee agency's programs. Operational materials such as computer forms, accounting materials, and instructions that do not substantially affect the operation of the agency's program and are based on procedures previously approved by the Commissioner need not be submitted.

Subpart E—Federal Insured Student Loan Program

*§ 177.500 Circumstances under which loans may be insured under the FISLP.*

*Comments.* One commenter strongly objected to the provision that "the Commissioner may insure all loans made by a lender if the lender is not able to obtain the insurance of the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements." The commenter felt that the Commissioner would be negating the intent of Congress to promote strong agencies if all the loans made by a lender were insured by the Commissioner. It was suggested that only those loans for which the lender could not obtain approval of the guarantee agency should be insured by the Commissioner.

*Response.* Section 177.500(b), which is based on § 423(b)(2) of the Act, provides that the Commissioner may (not shall) insure all of the loans a lender intends to make, if more

than 20 percent of the prospective borrowers, over a 12-month period, of a lender located in a guarantee agency State do not meet the guarantee agency's residency requirements. There is nothing to preclude a lender from participating in both the FISLP and guarantee agency program by making loans under the guarantee agency program to students who meet the guarantee agency's residency requirements and making loans to students under the FISLP for students who do *not* meet the guarantee agency's residency requirements.

However, if 80 percent or more of the prospective borrowers of a lender located in a guarantee agency State are eligible under the guarantee agency program, the lender would have to participate under the guarantee agency program for such students and could participate under the Federal program only for those borrowers who do not meet the guarantee agency's residency requirements.

*§ 177.502 The application to be a lender under the FISLP.*

*Comment.* The proposed rule under § 177.52(c) contained a list of factors the Commissioner would consider in determining whether to enter into an insurance contract with a lender and what the terms of the contract should be. Numerous comments were received. One commenter particularly objected to the notion that a school lender would be scrutinized more closely than a commercial lender. Other commenters reacted to the preferable treatment given those lenders which would make loans only to students residing in the lender's immediate geographical area.

*Response.* In response to the comments received on § 177.52(c) of the NPRM, the Commissioner has eliminated the concept that lenders should be making loans only to students residing in the lender's immediate geographical area. The Commissioner wishes to convey that lending outside of a lender's immediate area does not necessarily have to contribute to a higher default rate as long as a lender is carrying out lending practices in a sound and prudent manner. Commercial lenders are subject to considerable examination and supervision by various Federal and State regulatory agencies. There are also numerous Federal and State laws governing virtually every activity or function of commercial lending institutions. School lenders are not subject to this type of regulatory control in their capacity as a lender by any agency. Nor are there any Federal or State laws that specifically govern schools as lenders to provide controls over their financial stability in order to protect their customers (i.e., students). For these reasons, the Commissioner not only finds it appropriate, but essential, to carefully evaluate the application of any "non-regulated" prospective lender before giving that lender permission to make loans under the FISLP.

*§ 177.504 Issuance of Federal loan insurance.*

*Comment.* Several commenters questioned the meaning and purpose of the sentence contained under § 177.504(b) which reads, "The Commissioner issues FISLP insurance on the implied representation of the lender that all requirements for the initial insurability of the loan have been met."

*Response.* The language contained in this provision makes clear that when the Commissioner issues a commitment of Federal loan insurance, such insurance is issued on the lender's implied representations that all requirements for the initial insurability of the loan have been met, including the limitation set forth in § 177.500 relating to the eligibility of lenders in guarantee agency States to receive Federal loan insurance. The language is intended to make clear to participating lenders that the issuance of Federal loan insurance should not be considered by lenders to mean that a default claim will inevitably be honored on that loan, regardless of whether or not the loan was properly made to an eligible student. However, a lender may rely on statements of the borrower and his or her school in making the loan as set forth in § 177.509(a)(2).

*§ 177.505 Limitations on maximum loan amounts.*

*Comment.* Two commenters suggested clarifying the language under § 177.54(a)(2) of the NPRM, particularly the phrase ". . . to any student for his or her first academic year of a program of postsecondary education who has not previously enrolled in such a program."

*Response.* Minor modifications have been made to § 177.505(a)(1). The provision now read as follows: "to a student who—(A) is enrolled in the first academic year of undergraduate study; and (B) was not previously enrolled in an undergraduate program . . ."

*§ 177.506 Insurance premiums.*

*Comment.* One commenter objected to the provision under § 177.13(b)(2) of the NPRM concerning the timing of the collection of the insurance premium by the lender from the borrower. The commenter was specifically concerned that the proposed regulations required lenders to collect the insurance premium at the time of the loan disbursement. The commenter felt that lenders should have the option to determine when, based upon its own particular system, to require the payment of the insurance premium by the borrower. He recommended, therefore, the deletion of any reference as to when to collect the insurance premium.

*Response.* The regulations under § 177.506(e) revise § 177.13(b)(2) of the NPRM with respect to the procedure a lender may use in collecting from students the amount of the insurance premium. As stated in paragraph (e) a lender may collect from students the amount of the insurance premium by either deducting the insurance premium from the proceeds of each disbursement or by billing the borrower separately. The timing of the billing is, therefore, at the lender's discretion. However, it should be noted that the amount of the insurance premium is based on the date of disbursement and the amount disbursed. Obviously, the lender must know these facts before a borrower could be billed.

*§ 177.507 Repayment of loans.*

*Comment.* One commenter asked how the 15-year rule applies if several notes of a single student owned by a lender have been consolidated into a single promissory note.

*Response.* The 15-year rule applies to each loan on an individual basis. If loan consolidation would result in the repayment of individual loans extending beyond the 15-year term, lenders must compute the installments on each loan separately. However, lenders may still consolidate the several payments due into a single payment schedule.

*Comment.* One commenter felt that § 177.58(e) of the proposed regulation concerning graduated repayments was an extreme example of over-regulation and suggested that it be either simplified or totally deleted.

*Response.* The Commissioner has eliminated the $4,000 minimum and the requirement that percentage increases in yearly installment payments not be greater than the percentage increase in installment payments between the first year and second year of the repayment period.

The only requirement contained in the final regulations is that a graduated repayment schedule may not provide for any single installment that is more than 3 times greater than any other installment.

The intent of this provision is to prevent sudden or steep increases in installment amounts or "balloon payments" which could easily lead to default.

*Comment.* Some commenters objected to the method of equal repayment installments (with certain exceptions not here relevant) because the rule would not permit payments of equal installments of principal with declining payments of interest, a system used by many lenders and clearer to students than a "level debt" payment system which involves questions of unearned interest and refund calculations.

*Response.* The Commissioner agrees with the comments and has deleted the requirement except in cases where a supplemental repayment agreement is used.

*Comment.* Paragraph (e) of the final regulations sets forth specific requirements of a lender that has disbursed "a FISLP loan and later learns that the borrower has not been or will not be a student enrolled on at least a half-time basis at a participating school during the period for which the loan was intended." This provision requires the lender to make the loan immediately due and payable. One commenter asked whether a lender would be required to apply the requirements of paragraph (e) if the lender learns that the borrower has not been enrolled but intends to enroll at a later period which would be within the period for which the loan was intended.

*Response.* The final regulations for the FISLP have been modified to allow a borrower to receive a loan disbursement directly from the lender prior to his or her actual enrollment in only two instances: (1) When a borrower is attending a foreign school; and (2) When a borrower is receiving funds directly from a school lender.

In either of these cases, a lender, regardless of a borrower's intended plans to enroll later

in the academic year, is required to apply the requirements of paragraph (e) when the lender learns that the borrower failed to enroll at the beginning of the period for which the loan was intended.

Since the Commissioner pays interest and special allowance on the amount of the disbursed loan, it would be financially impractical to permit a borrower to hold on to Federal funds for which the borrower shows no immediate need.

*Comment.* One commenter has suggested that the $360 minimum payment per year is meaningless for those loans which exceed $2,500 since the maximum repayment period of 10 years requires payments of that amount or more in order to fully repay the loan plus interest within the 10-year period.

*Response.* Under § 177.507(f), a graduated repayment schedule is allowed. Thus this section permits smaller than normal payments during a period of particular hardship to a borrower with larger payments making up the difference in later years.

*Comment.* One commenter suggested that the provision under § 177.507(a)(3) which allows a student to establish a repayment schedule which requires payments to begin prior to the end of the grace period is inconsistent with the notion or prepayment without penalty because the student who begins the repayment period early will not have full advantage of the grace period.

*Response.* There is no obligation whatsoever for a student to begin repayment prior to the end of the grace period and, therefore, not utilize the entire grace period. A student may at his or her option prepay part of the loan within the grace period and yet still maintain the remainder of the grace period with respect to the unpaid balance. The student who chooses not to take full advantage of the grace period is not being penalized because the decision is strictly up to the student.

*§ 177.508 Deferment.*

*Comment.* One commenter asked if a borrower had to be current in his or her payments in order to qualify for a deferment.

*Response.* No. A borrower can be delinquent in making certain payments and still qualify for a deferment. However, a borrower whose loan is in default and who has not made satisfactory arrangements to bring the account current is not eligible for deferment of repayment.

*Comment.* One commenter asked if an unemployment deferment may be granted for 2 six-month periods which are not consecutive.

*Response.* No. A borrower is entitled to an unemployment deferment for only a single period which may extend for a maximum of 12 months.

*Comment.* Numerous comments were received regarding the unemployment deferment. One commenter felt that the unemployment deferment should be granted only to those whose state of unemployment is due to conditions beyond the borrower's control, not to those who voluntarily resign from full-time employment. Another commenter applauded the new deferment but felt that the borrowers would become victims of a lender's "capricious or arbitrary decision."

*Response.* It is not the intention of the program to require a person to remain employed against his or her will. At the same time, proper judgement must be used to determine whether a borrower is acting in good faith in attempting to obtain employment so that he or she may repay the loan. Thus, the regulations recognize freedom of individual choice of the borrower tempered by the professional judgement of the lender.

*§ 177.509 Due diligence in making and disbursing a loan.*

*Comment.* One commenter asked if a lender would be permitted to delegate to a servicing agency such administrative functions as the preparation of the promissory note, calculation of insurance fees, and preparation of disbursement checks.

*Response.* There is nothing to prohibit a lender from using the services of a servicing agency to fulfill the administrative functions noted above; however, the delegation of any function to a servicing agency or other party does not relieve the lender of its responsibilities to exercise due diligence. Furthermore, if a servicer is negligent in its loan servicing activities, the holder is responsible for the consequences.

*Comment.* Many lenders have objected to language in § 177.59 of the proposed regulations which implies comparability between loan procedures and collection practices used by commercial lenders for loans not covered by insurance and those used in connection with loans under the FISLP. They point out that FISLP loans are not comparable in many ways with general commercial loans and argue that due diligence standards may, therefore, be different.

*Response.* The Commissioner recognizes that the two forms of loans may not be precisely comparable. However, the statute defines the term "due diligence" as relating to practices utilized by financial institutions for consumer loans. This statutory definition has been added to § 177.200, General Definitions, in these regulations. The Commissioner has in §§ 177.509, 177.510 and 177.511 set forth procedures which the Commissioner determines will satisfy this requirement.

*Comment.* Many commenters strenuously objected to the provision under § 177.59(b)(3) of the proposed regulations requiring a lender, prior to making its first loan to a particular student, to conduct a personal interview with the student to ensure that the student understands his or her obligations and responsibilities with respect to the loan. Lenders, in particular, objected to the requirement because it would necessitate hiring additional personnel, thereby imposing additional administrative expenses. One speculated that a number of lenders will restrict their participation as a result of the requirement. A final commenter questioned the value of conducting an interview prior to making the initial loan considering the lapse in time between the interview and the beginning of the repayment period. As an alternative, this commenter suggested that the interview be the responsibility of the school and be conducted before the degree is conferred, with a reminder to the student to visit his or her lender to establish a repayment schedule.

*Response.* In view of the many practical difficulties raised by the commenters and in consideration of the possibility of over-regulation, the Commissioner has reconsidered the requirement that a lender conduct a personal interview with all borrowers in connection with due diligence.

Although the interview is no longer required, the Commissioner believes that lenders should make every effort to interview the students, because it does establish, at the start, that necessary link between the lender and the borrower and will also eliminate possible confusion as to the terms and conditions of the FISLP loan.

*Comment.* One commenter objected to the provision in § 177.509(g)(2) which prohibits a lender and a school from obtaining a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The commenter noted that because loan proceeds sometimes arrive after the student has enrolled, it is his school's practice to obtain the power of attorney for the loan check prior to a student's enrollment. When the check arrives, the school is able to cash it immediately. The commenter pointed out that "this allows the university to calculate the student's university costs, and defer these same amounts until the time that the loan arrives."

*Response.* The restriction on the power of attorney is derived directly from the statute and cannot be changed. The statute provides that loan disbursement checks must require the personal endorsement of the borrower. Furthermore, the school does not need a power of attorney over a student's loan check to calculate the student's cost and defer the payment of tuition and fees. It may, for instance, require the student to sign a promissory note for fees at enrollment if the loan check has not yet arrived. When the check does come, the student would merely have to endorse it over to the school to meet his or her obligations. The Commissioner does not perceive this as a significant burden to the school. In addition, the Commissioner believes that a student's endorsement of the loan check increases the student's understanding of his or her ultimate financial responsibility for repayment of the loan.

*Comment.* One commenter objected to the regulation requiring that a check be personally endorsed by the student because a student may be "many hundreds of miles from the educational institution at the time the check is delivered to the financial aid office."

*Response.* The requirement that a student must personally endorse the loan check is derived directly from the statute and cannot be omitted. In some cases, payment may be delayed, but the Commissioner does not consider this as a significant burden in light of the benefits of personal endorsement discussed above.

*Comment.* One commenter objected to the word "local" in § 177.57(b) of the proposed regulation as unduly narrowing the scope of applicable law.

*Response.* Since the term "local" law includes State law, the Commissioner has retained the term "local" in §177.509(f).

*Comment.* Several commenters have objected to the requirements contained in

§ 177.57(c)(1) of the proposed regulations that a check must carry the legend "GSLP—Payee Endorsement Required." They have noted that the requirement is a significant burden to lending institutions, particularly those that use computer produced checks. Moreover, they stated that the phrase is superfluous since they believed that under the applicable provision of the Uniform Commercial Code all checks require the endorsement of the payee except if they are deposited into the student's account at a banking institution.

*Response.* The statute requires that a FISLP loan be disbursed by means of a check requiring the student's endorsement. Nevertheless, in response to public comment, the Commissioner has deleted the requirement that each FISLP check must bear the legend "GSLP—Payee Endorsement Required." However, § 177.509(g)(2) prohibits the use of a power of attorney in connection with a FISLP loan and lenders who do not voluntarily use the legend should be aware that they run the risk that a third party ignorant of this prohibition may accept a FISLP check endorsed by someone other than the student. On the other hand, the Commissioner has decided that deposit of a FISLP check in the borrower's account at a bank or other financial institution without first endorsing it would not constitute a violation of this requirement, since this practice is condoned by the Uniform Commercial Code. The regulation has been changed accordingly.

*Comment.* Several commenters objected to the requirement contained in § 177.57(c)(2) of the proposed regulation that the loan check be transmitted to the school rather than the borrower.

*Response.* The statute authorizes the Commissioner to require that the check be sent directly to the school. He has exercised this option under the FISLP to ensure that the student realizes that the loan is to be used for educational purposes and to simultaneously notify the school that the student is a GSL borrower. In those cases where a student is not attending a school within the United States, the check must be sent directly to the student because there are problems in obtaining the cooperation of a foreign school in handling GSLP checks.

*Comment.* Several commenters suggested that all checks should be made payable to both the student and the educational institution in order to prevent student abuse.

*Response.* The Commissioner believes that by having loan checks sent to the school, but not necessarily made payable to it, there should be common participation by both school and student sufficient to curb abuse by either. The regulations do permit, at lender option and with the written consent of the borrower (which the lender may require as a condition for making the loan), the check to be made jointly payable to both the student and the school. However, to require that this practice be followed would be over-regulation.

*Comment.* One commenter asked whether a lender may disburse a loan after a borrower ceased to be enrolled on at least a half-time basis.

*Response.* Regional offices of the Office of Education have the authority to approve requests from lenders to make late disbursement of FISLP loans; however, approval by the regional office of late disbursements may be granted only when the regional office is satisfied that the loan proceeds will be used for the educational expenses of the period of enrollment for which the loan was made.

The approval of late disbursements includes both the approval of disbursements to be made after the expiration date of the insurance commitment and the approval of disbursements to be made prior to the expiration date of the insurance commitment but after the borrower has ceased to be enrolled on at least a half-time basis.

*§ 177.510 Due diligence in servicing a loan.*

*Comment.* One commenter asked if the proposed regulations intentionally deleted the requirement contained in the earlier proposed regulations that a lender must make contact with a borrower at least once a year before the commencement of the attendance period.

*Response.* Yes. The desired results of this potentially burdensome requirement on lenders is now accomplished through a requirement of the 1976 legislation that the borrower must keep the lender informed of his or her correct address. In withdrawing this requirement, the Commissioner notes that maintaining regular contact with the borrower prior to the repayment period is a prudent business practice which continues to be strongly encouraged. Improved skip-tracing and pre-claim assistance procedures are also now available to lenders who have problems in locating borrowers or getting borrowers to make timely payments.

*Comment.* A few commenters objected to the requirement that lenders must make "prompt" contact with borrowers who are no longer enrolled at an eligible school on at least a half-time basis in order to establish the terms of repayment. One commenter recommended that the word "prompt" be deleted because it is too restrictive. That commenter felt that lenders "should have the flexibility to arrange the repayment terms at a reasonable time before the commencement of the repayment period."

*Response.* The suggestions were not adopted. The Commissioner believes that the present language is reasonable. By requiring lenders to establish "prompt" contact with borrowers, the borrowers are reminded, possibly before they make other financial commitments, of their obligations with respect to repaying their FISLP loans. Furthermore, it provides lenders with the opportunity of giving the borrower notice that repayment may begin during the grace period without penalty.

*Comment.* One commenter has taken exception to the provision in § 177.510(b)(2) which urges lenders to consider the "current and potential income and financial obligations" of a borrower when establishing repayment terms. This commenter felt that this provision would require lenders to develop individual repayment plans, thereby eliminating automated computer conversion programs which are set up to provide the borrower with the longest possible repayment schedule. This commenter further objects to this provision because of the additional cost involved in negotiating individual repayment schedules.

*Response.* This provision does not preclude a lender from utilizing an automated conversion program which is set up to provide the borrower with the longest payment plan possible as long as the borrower has the option to request a shorter payment schedule. In this provision, the Commissioner is strongly encouraging lenders to design repayment plans which truly reflect a borrower's financial abilities. The Commissioner is emphasizing the importance of establishing realistic repayment plans to avoid defaulted loans.

*Comment.* One commenter asked what a "similar instrument" would be, which the regulations provide as an alternative to OE Form 1171 (Promissory Note-Installment).

*Response.* Any disclosure statement consistent with Federal Reserve Board Regulation Z is an acceptable repayment schedule.

*Comment.* Many commenters objected to the requirement that the terms of repayment be signed by the borrower. These commenters suggested that this requirement would "radically raise servicing costs and substantially increase default," if the failure of a borrower to return to the lender a signed repayment schedule would constitute grounds for default.

*Response.* The Commissioner acknowledges the difficulties which could possibly result by requiring that the terms of repayment be signed and has deleted the requirement in the final regulation. A signed repayment schedule is, however, considered desirable by the Office of Education.

*Comment.* One commenter asked whether the failure of a borrower to return to the lender a signed repayment schedule would constitute grounds for default.

*Response.* The requirement that a borrower must sign the repayment schedule has been deleted in the final regulation. However, as set forth in § 177.509(e)(3) a lender may exercise the option of including a provision in the note which requires the borrower to sign a repayment schedule not later than 120 days prior to the beginning of the repayment period.

*§ 177.511 Due diligence in collecting a loan.*

*Comment.* To be in compliance with the regulatory standards of due diligence in collecting a loan, a lender is required, when a borrower is delinquent in making a payment, to remind the borrower of his or her late payment by means of a letter, notice, telephone call, or personal contact. In the proposed regulations a lender was required to remind the borrower within 10 working days of the date the payment was due. Several commenters suggested that the 10-day requirement be extended to 15. They stated that in most cases lenders would not be able to comply with the 10-day requirement because most lenders do not receive a computer notice that a payment has been missed until 10 days have elapsed.

*Response.* The Commissioner believes that 15 days is a more reasonable length of time, and the regulations have been changed accordingly.

*Comment.* Several commenters felt that the OE Pre-Claim Assistance program was excessively slow, unresponsive, and ineffective.

*Response.* The Office of Education is presently implementing a simplified decentralized Pre-Claim Assistance system which is expected to produce the needed timeliness, responsiveness, and effectiveness. The OE Form 1249–1 will be used only to request skip-tracing assistance and steps have been taken which greatly enhance the ability of the Office of Education to obtain valid addresses in response to skip-trace requests.

*Comment.* One commenter asked whether the complete collections cycle must be repeated, if a new address is received during the cycle.

*Response.* No. The new address should be used for the remainder of the cycle and, if the borrower is not brought into repayment at the end of the cycle, a claim should be filed.

*Comment.* One commenter felt the regulations were unclear as to the lender's obligation to exercise due diligence with respect to a valid endorser.

*Response.* A lender is required to treat a valid endorser in the same way it would treat a borrower in exercising due diligence. If lenders fail to pursue a valid endorser, the claim will be rejected for lack of due diligence.

*Comment.* One commenter questioned whether a lender must continue to pursue collection for the 120/180 days if a borrower states his or her unwillingness to repay.

*Response.* Yes. The lender is required to follow the regulatory and procedural requirements commencing collection activity promptly after the beginning of delinquency and to continue this activity each month that the delinquency persists until it is reasonable to conclude (after 120/180 days) that the borrower no longer intends to honor his or her obligation to repay. Only upon default by the borrower shall the Commissioner honor a default claim.

*Comment.* One commenter objected to the requirement that lenders must obtain the Commissioner's approval before bringing suit against a borrower or endorser to recover the amount of unpaid principal and interest together with reasonable attorney's fees.

*Response.* As stated in the regulations, the Commissioner will normally approve a lender's request to bring suit and the Commissioner does not feel it to be too great a burden to require that the lender obtain that approval. The Commissioner believes it important to have the authority to disapprove such a request in those cases where the suit would be meaningless because the borrower does not have the ability to repay his or her loan or where the lender itself has not been acting in accordance with the collection procedures required by these regulations. The Commissioner's review of such a request will ensure uniformity and fairness in bringing suits against alleged defaulters and also help assure that any legal action by the lender will not compromise any legal action which the Federal government may subsequently wish to pursue.

*§ 177.512 Forbearance.*

*Comment.* Numerous comments were received requesting clarification as to the distinction between the two types of forbearance which lenders are permitted to grant their borrowers. Several commenters objected to the required agreement between the Commissioner and the lender in cases where forbearance would be inconsistent with the minimal annual repayment requirement and the 10–15 year length limitations. They felt it was a burdensome requirement. For a similar reason others objected to the requirement that a lender must seek the Commissioner's prior approval in order to extend the period of forbearance. Other commenters objected to the distinction made between various types of lenders with respect to the number of months a lender could grant an initial forbearance. They recommended treating all lenders equally, so that any lender could grant forbearance up to 12 months. A final commenter felt that the provision requiring lenders to contact borrowers at regular appropriate intervals during the forbearance period (if the forbearance period was for more than 2 months) would be both a costly and time-consuming burden.

*Response.* The Commissioner has greatly liberalized the forbearance section in light of the many comments received. Lenders are no longer required to enter into an agreement with the Commissioner for any aspect of forbearance. In addition, the proposed requirement that lenders must request approval from the Commissioner to extend the period of forbearance has been eliminated. A third major change from the proposed to the final regulations concerns the limit on the number of months a forbearance may extend. The final regulation permits any lender to grant forbearance for a period of up to one year. Finally, as set forth in the final regulations, a lender is required to contact the borrower at least every 3 months during the period of forbearance, only if the lender has granted a deferment of all payments. This is a departure from the proposed regulation which required a lender to contact the borrower at regular appropriate intervals during the period of forbearance in order to remind the borower of his or her outstanding obligation to repay.

The Commissioner believes these changes should be instrumental in reducing administration procedures and processing time for a lender who wishes to exercise forbearance. It should also reduce unnecessary defaults, since a lender should be more willing to exercise forbearance now that the administrative obstacles to its use have been removed.

*§ 177.513 Assignment of a FISLP loan.*

*Comment.* One commenter suggested that a blanket endorsement be allowed for loans involved in a transfer transaction.

*Response.* The Commissioner believes that it may be excessively time-consuming for the various officials involved in the transfer of a block of FISLP notes to handle each loan note on an individual basis; therefore, the regulations have been liberalized to permit the assignment of FISLP notes from one lender to another subject to a blanket endorsement. If a FISLP note is not subject to a blanket endorsement, it must individually bear effective words of assignment. In the final regulations, only the seller must sign and date the blanket endorsement or the note itself. This is a departure from the proposed regulations which required the buyer, the seller and any third party involved in arranging the transfer to sign and date the note.

*Comment.* One commenter objected to the distinction whereby lenders which purchased school-made loans may not rely upon the school's certifications, but non-school lenders which make loans and do not have a special relationship with a school may rely upon such school certifications.

*Response.* There is a valid basis for distinguishing between loans which are made directly by non-school lenders and loans purchased from school lenders. Whereas the non-school lender provides the borrower only with the loan, the school lender's agreement with the student also includes service in the form of education. If the school fails to provide such education, the student has defenses on the loan. Because a subsequent holder of a school-made loan is not a "holder in due course," such holder is subject to the same defenses and defects as the original lender. For this reason, lenders cannot rely upon certifications of the school.

There have been many problems resulting from loan defaults arising from loans made by a school lender. In some cases the school did not have the financial resources to meet its obligation to its students. The regulation, therefore, makes clear that the purchasing lender is required to make a sound professional judgement regarding the financial stability and business practices of a school before purchasing loans made by a school.

*§ 177.514 Death, disability, and bankruptcy claims.*

*Comment.* Several commenters complained about the length of time required for the Commissioner to make a determination of whether a borrower is totally and permanently disabled. Currently, medical evidence of the borrower's condition is sent to the Office of Education for review by a physician. While the approval time has been shortened recently, it may take several months for a determination to be returned to the lender.

*Response.* The Commissioner concurs that the approval system is inefficient. The regulations have been revised to require certification by a physican that the borrower is totally and permanently disabled, rather than having the Commissioner make this determination. The lender may file a disability claim when it receives the physician's certification.

*Comment.* Several commenters asked how the loan should be handled if a disability request is denied.

*Response.* Under the revised regulations, the lender must stop collecting borrower payments when notified that the borrower claims to be disabled. If the borrower fails to obtain a physician's certification, the time during which payments were suspended will be treated as a period of forbearance, and the

account will be considered current on the day the lender determines that the borrower cannot produce a physician's certification. However, the borrower will owe any interest that may have accrued. If the borrower does not resume payments, the lender may file a default claim after it has exercised due diligence from the date collection efforts resumed for the required 120/180 day period.

*Comment.* One commenter asked whether a borrower should be encouraged to continue making payments while waiting for a determination of disability, as recommended in the FISLP *Manual for Lenders.*

*Response.* Section 177.514 clarifies that the lender may not attempt to collect on the loan from the borrower or any endorser after being notified that the borrower claims to be disabled. The lender may not encourage the borrower to continue making payments. However, the lender should maintain contact with the borrower to assure that the borrower is making an effort to promptly obtain a physician's certification of disability.

*Comment.* Several commenters asked for clarification of the lender's role in handling a bankruptcy. They asked further how OE will handle the loan once it pays the bankruptcy claim.

*Response.* The lender is expected to file the Proof of Claim with the bankruptcy court, and to file a bankruptcy claim with the Commissioner within 60 days of determining that the borrower has been adjudicated a bankrupt. The lender has no other responsibilities for contesting the discharge in bankruptcy. The Commissioner will contest the bankruptcy discharge if the case warrants such action.

*Comment.* Several commenters asked how the provision in the Education Amendments of 1976 (Pub. L. 94-482) limiting discharges in bankruptcy during the first five years after leaving school would affect these regulations.

*Response.* Since the 5-year non-dischargeability provision affects the loan after the lender assigns it to OE, the provision has no effect on the payment of claims or on the lender's responsibilties.

*Comment.* One commenter asked what recourse a lender has if it is not notified of a bankruptcy until after the discharge.

*Response.* In the case described, the lender should file the bankruptcy claim within 60 days of learning of the discharge. If there is evidence that the lender did not learn of the adjudication because it had not exercised due diligence in servicing or collecting the loan, the Commissioner may take this into account under § 177.517(c) in determining whether to approve the claim.

*Comment.* One commenter asked, if the lender chooses not to participate in a Chapter 13 Wage Earner Plan, what will be considered due diligence before a default claim can be filed. The commenter notes that collection activity is prohibited under the Bankruptcy Act.

*Response.* If a Wage Earner Plan is established, and is unacceptable to the lender, the lender may file a default claim without further collection activity. The borrower's Wage Earner Plan will be considered evidence that the borrower did not intend to meet the terms of the FISLP loan.

*§ 177.515 Cessation of lender collection activity in certain cases.*

*Comment.* Some commenters objected to the requirement that a default claim be filed based on allegations against a school or lender, rather than waiting until a legal judgment is reached.

*Response.* This provision is intended to allow the Commissioner, in cases where borrowers may have a defense against repayment of their loans, to provide some relief to the borrowers without burdening the lender. Loans held by many lenders may be involved in a single incident, and fairness may require that collection activity against those borrowers be suspended pending the outcome of legal action. The Commissioner will be able to treat all involved borrowers equally, and to hold the loans for whatever time is necessary without collection efforts. After the case has been resolved, the Commissioner may determine that the borrowers should only repay a portion of the loans, and the borrowers will be expected to submit their payments to the Commissioner. Since the loans were originally filed as default claims for the convenience of the Commissioner, and not because of the student's refusal to pay, the Commissioner prohibits lenders from reporting these particular claims to a credit bureau.

*§ 177.516 Procedures for filing claims.*

*Comment.* Commenters requested that there be provision in the regulations for payment of supplemental claims when the original claim amount is too low. Commenters also requested a statement of procedures if OE overpays a claim.

*Response.* A supplemental claim is paid when the original claim payment is not the full amount to which the lender is entitled under applicable regulations. Payment of a supplemental claim is covered under the existing provisions for claims payment. Procedures for filing a supplemental claim will be included in the revised FISLP *Manual for Lenders.* If OE overpays a claim, the amount of the overpayment must be returned to OE. The lender should also send an explanation of its computation of the correct amount. Such procedures also will be included in the *Manual for Lenders.*

*Comment.* Commenters asked that OE clearly state all documentation that the lender must keep in the loan file.

*Response.* Sections 177.516 (c) and (e) and § 177.519(a) list the documents that the lender must submit with a claim, and must retain in a loan file, respectively.

*Comment.* Several commenters requested that the OE claim form be revised to include additional data now required by claims examiners, and that OE standardize regional office interpretations of what is required on the claim form.

*Response.* A new *Claims Examiner's Manual* was recently given to all regional offices and claims examiner training has standardized OE's claims operations. OE expects to revise the claims examiner's and lender's manuals as soon as these regulations are published. Only data requested on the claim form (OE Form 1207) and the documentation specified in these regulations will be required. The Commissioner believes that such procedural matters need not be covered in the regulations, however.

*Comment.* Many commenters objected to the requirement in the NPRM that "copies of all relevant correspondence pertaining to the amount owed . . ." be submitted with the claim. They pointed out that many computerized notices are sent to borrowers, and the lender does not keep copies or stores them in microform.

*Response.* The regulation now requires that "all personal correspondence relevant to the amount owed . . ." be submitted. The Commissioner is not requiring submission of copies of standardized notices. However, the collection history would be expected to have a chronology of all collection efforts, including the dates of such notices.

*Comment.* Several commenters recommended that OE accept microform copies of required documents in lieu of lost of flawed originals. Other commenters suggested that OE accept certified copies if the original is lost.

*Response.* OE claims procedures allow in certain circumstances for the acceptance of copies of documents that are certified to be true and exact copies. The Commissioner does not believe, however, that the details of these procedures need to be included in the regulations. A certified copy made from microform records is also acceptable in certain circumstances.

*Comment.* Commenters suggested that OE accept the payment correspondence required with a claim on microfiche to reduce the size of the claim package.

*Response.* OE claims units are not all equipped to use microfiche. The Commissioner believes that the new regulations have reduced the required documents to a manageable number, and use of microfiche is not necessary.

*Comment.* Commenters suggested that a complete list be given of the items of information required in the collection history.

*Response.* The Commissioner believes that a list of specific data required would be appropriate in the *Manual for Lenders,* but is not a necessary part of the regulations. Even in the *Manual for Lenders,* such a list could not be exhaustive. Since the collection history is required as part of the claim documentation, lenders should realize that sufficient data is required in the history for the Commissioner to determine whether the lender exercised due diligence.

Collection documentation must include such items as: a listing of notices sent and the date sent, letters to and from the borrower, a resume of telephone and personal contacts, contacts with references available in the collection file, and requests for pre-claims assistance. Updated addresses, and information gathered by the lender that might help OE collect from the borrower should be included in the claim.

*Comment.* Commenters recommended that OE clarify its requirement of a collection history including the "results of each borrower contact."

*Response.* While the regulations no longer refer to a summary of the results of borrower contact, this is still a part of the collection history. A summary of each telephone conversation, for example, is not required.

One summary of all the contact made and the results (i.e., whether the borrower paid, or stated that he or she did not intend to pay) is sufficient.

*Comment.* Several commenters questioned the extent of the lender's responsibilities in signing the required affidavit that the lender is unaware of the borrower's eligibility for any deferment. The commenters said that the borrower may claim to be eligible for a deferment, but not produce the documentation before a claim must be filed.

*Response.* The affidavit that, to the lender's knowledge, the borrower is not eligible for a deferment presently is a part of the lender's certification of the claim form. Since the affidavit on the claim form must be signed before the claim is submitted, it is no longer mentioned as a requirement in the regulations. The affidavit is meant to protect borrowers who are eligible for a deferment but are unaware of their eligibility, or who are unable to document their eligibility before the lender files a default claim. If the lender notifies the student that such a documentation is needed, and after a period of time in which the student could reasonably have written for the documentation, received it, and sent it to the lender, such documentation is still lacking, the lender is justified in signing the affidavit. The lender should include its attempts to obtain the documentation as part of the collection history. The lender may grant a deferment based on verification (for example, a telephone call to the borrower's employer) of the borrower's eligibility, if this is documented in the loan file.

*Comment.* The regulations provide that a loan is in default if the borrower fails to make an installment payment for a certain period of time, and "the Commissioner . . . finds it reasonable to conclude that the borrower no longer intends to honor his or her obligation to repay." The regulations further require that the lender file a default claim within 90 days after the default. A commenter suggested that the Commissioner may find it "reasonable to conclude" that if a borrower with subsidized and non-subsidized loans fails to pay the non-subsidized interest, the borrower does not intend to honor any of the loan obligations.

*Response.* The Commissioner does not agree with this interpretation. The obligation to pay, or arrange for the accrual of, non-subsidized interest while the borrower is in school is a part of the individual promissory note. If the borrower refuses to pay the interest, it may be reasonable to conclude that he or she does not intend to honor that loan obligation. This does not justify a determination that the borrower's other loans are in default. The lender is encouraged to arrange with the borrower to allow interest to accrue if the borrower displays a desire to meet the loan obligations but is unable to pay interest during the in-school period.

*Comment.* Commenters suggested that the regulations allow that, if a borrower cannot be located or states that he or she does not intend to repay the loan, the claim may be submitted immediately.

*Response.* The Commissioner does not concur with this suggestion. A delinquent loan account is not in default, as defined in § 177.200, until the delinquency has persisted for the required 120/180 day period. The lender must continue to attempt collection during the entire period. If the borrower cannot be located, the lender should use skip-tracing procedures and also request skip-tracing assistance from OE if the lender's efforts are unsuccessful.

*Comment.* A commenter asked if the lender could file a default claim, even if there had been no response from OE to the required pre-claims assistance request.

*Response.* The lender must include evidence of the request for pre-claim assistance with the claim. No documentation of a response from OE is required before the claim is filed.

*Comment.* One commenter requested clarification on the handling of payments received after a loan is in default.

*Response.* If a claim has not been filed with OE, the lender must credit the payment to the borrower's account. If the borrower's loan is still in default the claim may be filed. If the claim previously has been filed, the lender must promptly send the payment to the OE regional office with which the claim was filed, identifying the borrower to whose account it belongs.

*Comment.* Commenters objected that the requirement in the NPRM that claims be filed 30 days after receipt of notice of the first meeting of creditors and 60 days after a determination of death or disability was too restrictive.

*Response.* The time limit for bankruptcy claims has been changed from 30 days to 60 days, to conform with the limits for death and disability claims. Originally, the shorter time for filing bankruptcy claims was felt to be necessary to expedite the Commissioner's objection to a discharge in bankruptcy. However, the Commissioner has determined that receipt of the claim within 60 days will be adequate, and will allow the lender more time to file the proof of claim and to prepare the claim. The Commissioner believes that 60 days is a reasonable time period for the lender to prepare the claim for filing with OE.

*Comment.* Commenters asked for clarification of the beginning date for calculating the filing period.

*Response.* The regulations require that the lender file the claim within 60 days after determining that a borrower is dead or disabled under §§ 177.514(a)(3) or (b)(4), or after determining that the borrower has been adjudicated as bankrupt under § 177.514(c)(3). The filing period is calculated from the date of the lender's determination, not for example, the date a notice that the borrower is dead or disabled was sent to the lender. For default claims, the regulations require that the claim be filed within 90 days after the borrower is in default, as defined in § 177.200. Typically, this would mean that, from the date a monthly payment is missed, the lender must make a diligent collection effort for 120 days, then has 90 days more in which to submit the claim.

*Comment.* Many commenters objected to a rigid time limit for filing claims, especially default claims, with no allowance for exceptions to the requirement. An earlier, November 5, 1976 NPRM did include a list of exceptions to the filing limits. Commenters felt that situations such as a likelihood that the borrower would begin payment soon, or provide deferment documentation should be considered.

*Response.* The filing requirement does not mean that the lender cannot approve forbearance, if it is appropriate, as long as the lender does so *before* the loan is in default (before the 120- or 180-day period of due diligence ends).

*Comment.* Commenters questioned the Commissioner's authority to refuse payment of a claim submitted after the deadline, and asked why the Commissioner felt it necessary to establish filing deadlines.

*Response.* The Commissioner establishes time limits for lenders to file claims under the Commissioner's statutory authority to make regulations necessary to carry on the GSLP (§ 432(a)(1) of the Act) and also in the case of default claims, under the statutory requirement that lenders promptly notify the Commissioner of a default (§ 430(a) of the Act).

The Commissioner requires claims to be filed promptly to avoid paying an unnecessary amount of interest and special allowance while the claim is held by the lender after it could be filed. The Commissioner also requires prompt claim filing so that OE can begin timely collection activity or necessary legal actions in the case of defaults. Past GSLP experience has shown that some lenders often hold loans long after default, either because they expected payment soon but neglected to follow the account, or because they were not making prompt collection efforts when repayment should have begun. The Commissioner wants to prevent these situations, and to begin OE collection efforts before the delinquency has existed for a long period.

*Comment.* Several commenters complained that, since the majority of their defaults occur at one time of the year (13 months after June graduation) there is an overload of work at that point, and lenders are not able to file all the claims within 90 days after default.

*Response.* The Commissioner believes that 90 days is a reasonable amount of time to allow for filing of claims after default. Many lenders currently adjust their staff and resources to handle the required period of due diligence immediately following the end of the grace period, which also is often concentrated in one period. It seems reasonable, therefore, that the same loans could be prepared for claims filing in the next 90 days.

*Comment.* Some commenters asked whether the requirement that the bankruptcy claim include "any objections to the discharge in bankruptcy of which the holder may be aware" includes the 5-year non-dischargeability provision, and whether the lender must file an objection with the bankruptcy court.

*Response.* The non-dischargeability provision need not be noted by the lender in the claim. The lender is not expected to file an objection with the bankruptcy court. Examples of facts which the lender should report are that the debtor has assets available to pay the debt, or obtained the loan on the basis of misrepresentation.

*§ 177.517 Determination of amount of loss on claims.*

*Comment.* A commenter stated that several cases in which interest should be paid on a claim were not covered in § 177.64(d) of the NPRM. The commenter referred to interest that was not capitalized but that accrued because the student left school earlier than the anticipated graduation date and did not notify the lender. Also, the commenter mentioned interest that accrued while a borrower is awaiting a disability determination.

*Response.* Non-subsidized interest which accrued because the borrower left school earlier than expected and failed to notify the lender is clearly eligilbe for payment in the event of a claim. The regulations state that insured interest includes "unpaid interest that accrues through the date of default."

The interest which accrues while a disability determination is being made will be paid as part of the disability claim. Section 177.517 (b)(2)(iv) provides that unpaid interest that accrues until the lender receives a disability certification will be paid by the Federal government or will be the borrower's responsibility if the borrower does not obtain a doctor's certification of disability. Such interest could be capitalized and if the borrower subsequently defaulted, would be paid as part of the unpaid principal balance.

*Comment.* Many lenders requested that OE give them the dates between which interest is paid on the claim. Currently, they have no way of verifying the interest they are paid. Further, many lenders suggested that interest be paid until the claim check is drawn, since there is often a long delay after the Commissioner authorizes payment.

*Response.* The Commissioner agrees that lenders should, if possible, be provided the information needed to verify the interest paid. However, this would require the dates to be printed on the check, or in additional notice to be produced and sent to the lender. Neither option is feasible at this time. In cases of a disputed amount, the lender can obtain from OE a computer report showing the dates between which interest was calculated.

The Act specifies that interest will be paid through the date the Commissioner approves the claim for payment. Therefore, there is no legal basis to compute the interest through the date the check is issued by the Treasury Department.

*Comment.* A commenter recommended that the portion of § 177.65(a) of the NPRM that deals with school refunds on loans held by non-school lenders be deleted, since schools will now be required to send the refund directly to the lender in most cases.

*Response.* This section has been deleted from the new § 177.517.

*Comment.* A commenter noted that the Commissioner will consider whether "the lender * * * failed to exercise care and diligence commensurate with prudent business practices * * *." The commenter stated that making a loan on the terms of the FISLP is, in itself, imprudent by commerical banking standards. The commenter feared that this restriction might reduce loan access.

*Response.* A requirement that lenders use prudent business practices has always been a part of the FISLP. While a lender would generally not make a loan other than a FISLP loan to a student, the Commissioner's insurance offsets the student's lack of established credit or assets. This provision requires that, in making, servicing and collecting a FISLP loan, the lender not ignore sensible precautions against the borrower's default, such as exercising due diligence in loan collections, maintaining borrower contact, establishing repayment terms well before repayment should begin, or verifying that the student applicant is the person named in the loan application. The lender should not disregard indications that the borrower does not intend to repay, or convey in any way to the borrower that repayment is unimportant.

*Comment.* Many lenders asked that OE provide lists of the types of defects in a claim which can be excused or cured, and the types which cannot be remedied.

*Response.* Lists of "curable" and "non-curable", "excusable" and "non-excusable" defects were included in the November 5, 1976 NPRM. While lengthy, these lists did not cover all possible cases. Public comment on those lists led the Commissioner to conclude that the lists were confusing and intimidating to most lenders. In addition, one effect of the list was to identify those requirements which lenders could ignore, since violation of these requirements would not prevent claim payment. Therefore, these regulations do not contain such lists.

Section 177.517(c), *Factors affecting the insurability of a loan,* notifies lenders that the Commissioner, in reviewing their claims, considers legal defects in the loan and whether all holders of the loan complied with FISLP requirements. Lenders are also told that the Commissioner deducts from the claim any amount that is not a legally enforceable obligation of the borrower, unless that amount is based on the defense of infancy.

Section 177.517(g), *Circumstances under which defects in claims may be cured or excused,* provides guidance to the lender. The general rule presented in paragraph (g) is that the Commissioner may excuse defects if they did not contribute to the default, or prejudice the Commissioner's attempt to collect from the borrower, or are not attributable to the current holder. The Commissioner's concern is that, generally, a loan which is paid as a default be an obligation which is legally enforceable against the borrower.

Section 177.517(g) also states that a lender may cure certain defects in a manner specified by the Commissioner. Typically, such a claim would be returned to the lender with instructions on how the defect could be cured. Since this procedure is a remedial action relevant to a few cases, the Commissioner does not believe that a list of all such cases are needed in the regulations. The Commissioner expects that, as a matter of course, lenders intend to comply with all FISLP regulations and that claim defects will be isolated exceptions to be dealt with individually. The simplified requirements in these regulations, and the standardized claims processing in all regional offices will allow lenders to submit most of their claims without defects.

*Comment.* Commenters asked whether lenders could adjust loan amounts unilaterally, and, if so, if the lender is required to perform collection activity over again on the new, adjusted amount. For example, if a lender, while attempting to collect a loan, learns that a student withdrew from school two years previously, can the lender add the interest the student owes to the loan amount, but submit the claim without any further collection efforts?

*Response.* The lender should adjust the amounts of principal and interest owed on its records as soon as it learns such an adjustment is necessary. In the commenter's example, the lender may add the unpaid interest to the loan principal. If the lender learns of a required adjustment after unsuccessfully making a diligent collection effort for the required period, the lender may adjust the amount claimed without making collection efforts based on the new amount. However, if contention over the amount owed contributed to the default, due diligence would require that the lender notify the borrower of the adjustment, and attempt to collect on the new amount. The Commissioner notes that any adjustment must be documented in the claim submission, so that the claims examiner can verify the accuracy of the amount claimed.

*§ 177.519 Records, reports and inspection requirement for FISLP lenders.*

*Comment.* Some commenters objected to the provision that requires lenders to retain records required for each loan for not less than 5 years following the date the loan is repaid in full by the borrower or until the lender has been reimbursed on a claim.

*Response.* The General Education Provisions Act, § 434(a) (20 U.S.C. 1232c) requires that GSLP loan records be retained for 5 years after payment in full. The Commissioner believes the five year requirement is necessary in order to provide auditors and field examiners an opportunity to examine pertinent records so as to ensure that a lender is conducting its lending activities properly. Finally, experience has shown that certain cases of program abuse can take as long as five years to resolve. This five year period is also within the six year statute of limitations for legal action against a lender.

**Subpart F—Requirements, Standards, and Payments for Participating Schools**

*General*

*Comment.* Numerous comments were received from schools objecting to various provisions of Subpart F based on the argument that schools often do not know which of their students have received GSLP loans or, in the case when the school knows that a student has a loan, who the lender is. These objections were raised in connection with requirements for recordkeeping, handling of refunds and notifying lenders of a student's change in enrollment status.

*Response.* The Education Amendments of 1976 amended § 427(a) and § 428(b) of the Act to require that, as a condition of Federal or guarantee agency insurance, the borrower's school would have to be notified that a student attending that school had

received a GSLP loan. In addition, it requires that the school be told the name of the lender. Provisions to implement this requirement appear in these regulations.

Section 177.509(g)(1)(i) requires that FISLP lenders mail loan checks to the school, to the attention of the school official named on the loan application, except in the case of a loan made for a student attending a foreign school. A similar requirement is contained in § 177.401(b)(7) for lenders participating under a guarantee agency program. Under this provision, the guarantee agency has the option of requiring lenders to send all loan checks to the school or requiring that either the lender or the agency itself inform the school about the loan within 30 days of the loan disbursement.

The Commissioner expects that these procedures will satisfy the school's need to know about which students obtain loans after the effective date of these regulations. Information on student borrowers who obtained loans prior to the implementation of these procedures can be obtained from the Student Confirmation Report and similar reports utilized by the guarantee agencies. The Commissioner will not hold a school responsible for the requirements of Subpart F of these regulations pertaining to any particular loan, if the school was not notified by either a lender or a guarantee agency about the student's receipt of the loan.

*Comment.* Many commenters objected to the proposed requirement that schools notify lenders within 60 days of changes in a student's enrollment status. Most of the comments stated that 1) the requirements were duplicative of existing requirements for the Student Confirmation Report (SCR) and that 2) the proposed requirements would be costly for a school to implement, especially if the school has a large student population.

*Response.* In view of the many complaints about the proposed 60-day notification requirement, the Commissioner has decided not to make the notification of lenders by schools a requirement at this time. Therefore, the proposed requirements in § 177.77 have been deleted.

The decision not to include the proposed requirements for 60-day notification by the school in the final regulations was based, in part, on the expected improvements in the SCR and in the "turn-around time" for providing the information reported by schools on the SCR to lenders.

Future SCR's issued by the Office of Education will only include the names of students who have received FISLP loans. Student status information concerning guarantee agency loans should be reported through each guarantee agency's own student status reporting system.

Student status reporting, other than through the SCR, is not mandated by these regulations. However, the Commissioner urges that a school notify the lender, when possible, if the school knows that a student who has obtained a GSLP loan has either left school or is no longer enrolled in at least half-time status. This is especially important if the time in reporting this information on the next SCR submission would involve more than a 60-day time lag.

*§ 177.600 Participation agreement between an eligible school and the Commissioner.*

*Comment.* One commenter suggested that the final regulations address the interim status of a school that is undergoing a change in its controlling ownership or other form of control. The commenter further suggested that a school undergoing this change, that had also maintained its accreditation and State authority to continue operations, be permitted to continue GSLP participation under a temporary statement of eligibility. The continued participation arrangement, however, would be subject to a finalized new agreement.

*Response.* This suggestion was not adopted. The Commissioner feels that the requirement that a school that changes its ownership or form of control continue its participation only under a new agreement is reasonable. A school that is contemplating a change of this type should also plan to enter into a new agreement with an effective date that coincides with the effective date of the change.

*§ 177.601 Agreements between the Commissioner and a school that makes or originates loans.*

*Comment.* Several commenters were concerned about the 50% undergraduate lending limit for school lenders. One commenter objected to the 50% provision, calling it "unduly restrictive." Another commenter suggested that schools be permitted to use an entire year as a time frame for measuring the 50% of students in attendance instead of having to keep a fluctuating enrollment count for students in receipt of a GSLP loan as proposed.

Some commenters misinterpreted various aspects of the 50% provision; still other commenters wanted further explanation of the requirements.

*Response.* A school is limited to making loans to no more than 50% of its undergraduate students by § 433(a)(1) of the Act. The law, however, provides that under hardship circumstances, a school may obtain a waiver to exceed the 50% limit. This provision is included in these regulations at § 177.601(d).

In regard to using a set period of an entire year for determining if a school is complying with the 50% limit rather than requiring that a school keep constant track of its lending situation, no change was made in the regulations. The Commissioner interprets the language of § 433(a)(1) of the Act, which states "50 per centum of the students in attendance", to mean those students currently attending.

In order to determine current attendance, a school must keep a running tally on students to whom it makes or originates GSLP loans. The Commissioner believes that this is a reasonable requirement, in light of the general responsibilities a school has as a participating school and as a school that is also a lender. For example, schools must keep records on their students who receive GSLP loans and schools that make or originate loans must of course keep track of these loans. A school should also know, with reasonable accuracy at a particular point in time, the count of its current undergraduate enrollment. Therefore, the information necessary to comply with this requirement is already being gathered on a regular basis.

For the purpose of the 50% lending limitation, all of a school's undergraduate students, attending on at least a half-time basis, are considered eligible to receive a GSLP loan. It is not necessary when making a count of all undergraduates to ascertain if each student meets any additional eligibility restrictions such as having already reached the undergraduate loan limit of $7,500.

*Comment.* One commenter objected to the requirement that a school be provided with a written loan denial or student's sworn statement about a loan denial, citing that school lenders are aware of commercial lenders in their areas who deny GSLP loans. Another commenter suggested that a student be required to provide the school with three loan denials prior to obtaining a loan from the school.

*Response.* The regulations have not been changed. The statute requires that the school must be provided with a written statement from an eligible commerical lender, or the student's sworn statement to prove that a loan was sought elsewhere but denied. However, a requirement that a student obtain three loan denials would be a hardship for both the school and the student.

*Comment.* One commenter thought that the regulations should clarify what is meant by a "pattern reflected in the statement of loan denials" which will be considered in determining whether a school has adhered to those requirements.

*Response.* Section 177.601(b)(3) has been modified due to this comment. That paragraph now includes an example of what the Commissioner believes constitutes an unacceptable pattern of loan denials.

*Comment.* One commenter asked what effect, if any, limitation, suspension or termination action in regard to school lenders has on the insurability of a loan that was issued during the period that the school was in violation.

*Response.* The insurability of a loan that was issued during a period in which the lender was in violation depends on the nature of the school's violation. Therefore, the insurability of such loans must be determined on a case by case basis. For example, if the violation contributed to the default on a loan, the loan may not be considered insurable.

*§ 177.602 Providing information to prospective students.*

*Comment.* A number of commenters suggested that the proposed section on student information be deleted and that § 178.4 of the Student Consumer Information Services final rules be substituted.

*Response.* This suggestion has not been adopted. The requirements in § 178.4 are not comparable to the requirements in this section with regard to the school's provision of employment data on its own graduates.

*Comment.* Several commenters applauded the proposed requirements that certain schools must provide students with information on employment prospects. However, they thought that the proposed requirements needed to be strengthened, by requiring that all information provided

students be written and by requiring more than a "good faith effort" on the part of the school to provide this information.

*Response.* The Commissioner has adopted these suggestions. The regulations now require that the information about the employment of a school's graduates be provided to the student in writing. Also, the language which refers to a "good faith effort" by the school has been dropped.

*Comment.* One commenter complained about the additional burden that requirements for providing students with employment data would put on the schools and on overworked financial aid administrators. The commenter also thought that the requirements should be linked to receiving the administrative cost allowance.

*Response.* The regulations do not require the school financial aid administrators to disseminate the information required under this section. For schools that have either employment counseling or placement offices, persons working in those offices would most logically be the ones to handle these requirements.

The Commissioner feels that it is very important that prospective students be made aware of their chances for employment, especially when the student is incurring debt in order to prepare for a specific type of employment opportunity. Section 493A of the Act provides that schools receiving the administrative cost allowance "shall carry out information dissemination activities to prospective students" which relate to consumer information. The provisions of § 177.602 are not linked to the requirements of § 493A of the Act, and are not contingent upon receiving the administrative cost allowance.

*Comment.* It was suggested that if the intention of the regulations is to focus on proprietary schools that offer vocational training, that the language about schools that offer career programs be specifically directed to those schools.

*Response.* The requirements under § 177.602(b) that a school provide prospective students with information on employment of the school's own students is not limited to schools offering vocational programs. The examples of careers in teaching or pharmacy have been added to that paragraph to clarify the applicability of this provision.

*Comment.* One commenter suggested that schools be required to warn students that (1) a specific diploma or degree might be necessary to secure employment and (2) students should check with prospective employers concerning specific academic requirements for the particular type of employment they are interested in before enrolling in the program.

*Response.* The regulations have not been changed to include these requirements. The Commissioner believes that where such requirements exist most schools do make this information known to their students. Those schools that do not should certainly do so.

*Comment.* One commenter thought that requiring schools to provide complete statements of employment opportunities for all professional training programs would be more effective than requiring the school to keep employment data on its own graduates.

*Response.* The Commissioner feels that information about the employability of a particular school's own graduates is crucial knowledge for a prospective student in making an intelligent decision on whether to enroll in that school. A general picture of employment in a particular field taken from national or regional data may be helpful, but does not answer the question about whether students from that school have been successful in competing for those jobs.

However, the Commissioner urges that schools that can obtain additional data concerning national or regional employment in a particular field also provide this additional information to their prospective students.

*§ 177.603 Admissions criteria for a vocational, trade or career program.*

*Comment.* One commenter requested clarification of the terms "career program" and "career field trade."

*Response.* The Commissioner agrees that an explanation of which programs are affected by § 177.603 is in order. First, note that the language of § 177.603 now uses the terms "vocational, trade or career program" rather than a "career field trade." The term "career field trade" was not used in the final regulations because it is confusing. A "career program" is a program designed to train individuals for a specific employment opportunity such as in medicine, computer technology or teaching as opposed to courses in a liberal arts program. The requirements of this section can apply to college and university courses of study as well as to a vocational program.

*Comment.* One commenter suggested that a further explanation of what is intended by the phrase "other appropriate criteria" be included in the final rule.

*Response.* The suggestion was not adopted. The wide variety of programs offered by many types of schools eligible to participate in the GSLP makes it impractical to attempt to include any specific requirements for tests or other appropriate evaluation methods that would meet the standard for compliance with these regulations.

However, a school's compliance with the requirements to determine if students can benefit from the course of study and the appropriateness of the criteria used to make this determination can be judged in restrospect through the evaluation of the performance of the students who are admitted to the program. This type of evaluation would include looking at the school's withdrawal and failure rates, whether employers are accepting the students who complete the program and other such indicators.

*Comment.* A commenter objected to the use of the word "substantial" in § 177.603 in regard to the requirement that a school "determine that there is a substantial and reasonable basis to conclude that a prospective student has the ability to benefit."

*Response.* The use of the phrase "substantial and reasonable basis" was included in the original implementing provisions on admissions criteria for vocational or trade programs in 1975. At that time, a commenter had suggested that the words "reasonable basis" be added to the regulations because no test can accurately determine a student's ability to benefit from training to be provided by an institution. The Commissioner agreed with this view and in the final regulation the language was modified. However, the phrase was changed to include the word "substantial" because the Commissioner believed at that time and still believes that "reasonable basis" is too vague and would make this provision unenforceable.

*§ 177.605 Certifications by a participating school in connection with a student loan application.*

*Comment.* Several commenters called for deletion of the requirement that a school must certify that a student is not in default on any GSLP loan. The commenters argued that it would be impossible to obtain valid information needed to certify that a student had not defaulted on a GSLP loan that he or she obtained for attendance at another school. It has been suggested that this certification be accomplished by the student as part of the student's signed statement on the application for a loan.

*Response.* The Commissioner agrees that the student should certify this information directly on the application. The school may rely on this information from the student as it pertains to certification by the school of defaults on GSLP loans at that school. The provision relating to defaults on GSLP loans obtained while the student attended another school has been deleted.

*Comment.* Two commenters requested that the Commissioner provide schools with a "school manual" to assist in the processing of papers required for the GSLP and the other Title IV programs.

*Response.* A publication entitled *Student Financial Aid, 1978–79 Handbook* that covers 5 Title IV, HEA programs is available for assisting school financial aid officers. The Commissioner acknowledges that this publication has shortcomings in regard to the discussion on the GSLP. However, the diversity of program operations under the various guarantee agency programs is such that it would be difficult and probably prove more complicated if an attempt was made to include specific details for each program in one manual. To the extent that guarantee agencies adopt the proposed "Common Application Form" for the GSLP, it may be possible to expand on the GSLP program in subsequent revisions of the *Student Financial Aid Handbook.*

*§ 177.606 Administrative cost allowance to participating schools.*

*Comment.* In the overwhelming majority of comments received on these provisions the concern was voiced that funds had not been made available to implement the provisions on the administrative cost allowance.

*Response.* The Administration's budget request for FY 1979 included funding for the institutional administrative allowances for the GSLP, as well as for the Basic Educational Opportunity Grant Program. However, the Congress did not include any funds to pay these allowances when it acted on the FY 1979 Appropriations Act.

*Comment.* Many commenters wanted the provisions for counting the number of students for the purpose of payment of the administrative cost allowance made comparable to the amount of time a school actually spends in loan application processing and related activities. One commenter suggested that the count be determined based on the number of loans serviced rather than the number of students in receipt of a loan, since one student could receive several loan disbursements in one academic year. Another commenter thought that the count should be based on all applications processed since the school spends time completing applications for students who never receive loans.

*Response.* The regulations were not changed. Section 428(e) of the Act specifies that a payment of up to $10 per academic year be made for *each student in receipt of a loan,* not for each application form processed.

*Comment.* One commenter believed that payment of the administrative cost allowance would not improve the quality or quantity of consumer information students receive from the school because there is no provision in the regulations for monitoring the quality or completeness of this information by the Office of Education.

*Response.* Every school is subject to examination and review by the Office of Education regional staff. The Regional Office field examiners will be checking for the school's adherence to these requirements as part of their regular reviews.

*§ 177.607 The student's loan check.*

*Comment.* Several commenters thought that schools should be given the authority to pay students the loan funds in installments to help students budget these funds. It was also suggested that the regulations be changed to let schools retain funds for the second semester's tuition and fees in the case of loans obtained for a period covering more than one semester. Commenters voiced the opinion that such requirements would insure that the loan funds are only used for educational purposes.

*Response.* The final regulations were not changed on the requirement that the schools must give the remainder of funds to the student. The regulations were not changed for several reasons. First, it would be impossible for a school to control loan funds if a check has been made payable only to the student. These regulations do not require that all checks be made co-payee checks. The Commissioner feels that since a school would only be able to hold students' funds if the students have received a disbursement in a co-payee check and the students have endorsed the check prior to the school, those particular students would be relegated to "second class borrower" status. Secondly, many schools have objected in the past to any requirement that would make schools responsible for budgeting of a student's loan funds. Schools have often claimed that this requirement would be administratively burdensome.

Finally, the Commissioner feels that it may result in confusion if schools were either required or allowed to budget a student's loan funds at the same time that a lender that is disbursing funds under the new provisions for multiple installment loans (see § 177.302) made partial loan disbursements. The Commissioner feels that the problem of insuring that the loan funds are only used for educational purposes will be alleviated by lenders who use the multiple disbursement provisions.

Also the regulations have not been changed to allow schools to keep second semester tuition and fees or other charges, if these payments are not actually due. A provision has been added to § 177.607(e) to clarify what portion of the loan funds a school may retain. In response to a specific suggestion by a commenter, the regulations have been modified to allow that a school may distribute funds to a student in installments, if the student has requested in writing that the school do so.

*Comment.* Two commenters thought that schools should be required to return checks to lenders in the case of students who do not enroll in less time than the proposed 30 days. A period of 15 days was suggested.

*Response.* The regulations have not been changed as suggested.

The rationale for allowing the school 30 days to return loan checks that have not been claimed by students is that many schools close down their operations for periods of up to 30 days for holidays and vacations. Allowing a school only 15 days to comply would be extremely harsh.

*Comment.* One school commenter objected to the school's being involved as a co-payee on the loan check.

*Response.* Permitting the school, at lender or guarantee agency option, to be a co-payee on a loan check is consistent with the statutory requirement that loans be used only for payment of legitimate educational costs. This practice helps to insure that the loan funds will be spent only for educational purposes. It also affords the school quick payment of tuition and fees, since, if the student endorses the check, a school may retain the portion of the loan due in tuition and fees before turning the remaining funds over to the student. To prohibit this approach would be inconsistent with current practice of many lenders and some guarantee agencies.

*Other changes*

A provision has been added to the regulations at § 177.607(g) which addresses how a school must handle a loan check that is received after the period for which the loan was intended has ended. The Commissioner finds it necessary to add these requirements due to the number of inquiries that have been received from students and schools questioning how to handle loan funds that are involved in late disbursement situations.

*§ 177.608 Refund policy.*

*Comment.* Numerous commenters strongly objected to the inclusion of a refund policy in these regulations. These commenters cite the reasons for their objections as the Commissioner's lack of authority to issue specific refund requirements, the express intent of Congress that the Commissioner not do so, and a variety of general objections to the refund policy as an encroachment into the prerogatives of the institutions.

*Response.* A refund policy applicable to GSLP participating schools was first included in GSLP regulations in 1975. The statutory authority for those regulations, as well as for the regulations that are now being published as final, is found in two sections of the law, 20 U.S.C. 1082 and 20 U.S.C. 1088f–1.

The first provision, 20 U.S.C. 1082, authorizes the Commissioner "to prescribe such regulations as may be necessary to carry out the purposes" of the Guaranteed Student Loan Program. The provisions of 20 U.S.C. 1088f–1 authorize the Commissioner to establish "reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid" authorized under Title IV of the Higher Education Act. This latter provision was initially enacted by Congress in Public Law 92–318 (June 23, 1972) as 20 U.S.C. 1087–1. The Education Amendments of 1976 transferred that provision from the GSLP authorizing legislation to the general provisions governing all Title IV student aid programs.

The basic argument of the commenters is that Congress did not intend that the broadened applicability be used to justify Federal regulations to set criteria for "fair and equitable" refund policies. The history to which they refer is contained in a Conference Report (No. 94–1701) which reads as follows: "the managers state that they do not intend this *new requirement* to be used to justify Federal regulations specifying the *exact criteria* institutional refund policies must meet" (emphasis added).

It should be noted that the Office of Education has not used that "new requirement" as a basis for this refund policy. It is based on statutory authority granted by Congress in 1972. It should also be pointed out that these regulations do not specify "exact criteria" institutional refund policies must meet.

The need for regulations setting minimum standards for school refund policies clearly exists as evidenced by the continued student complaints about unfair treatment by schools, the lack of clearly stated refund policies as uncovered by a recent Office of Education study, and the expressed need for government action as demonstrated by the recent action of the Federal Trade Commission (FTC) in setting even more stringent requirements than those contained in these regulations.

The FTC requirements will become effective on January 1, 1980. These final regulations are more liberal in their treatment of schools than requirements in regard to refunds that have been made in the past. There is no additional burden placed on schools by these requirements. All GSLP participating schools should already be in compliance with these requirements, since the basic requirements concerning refunds have been in effect since 1975.

*Comment.* Several commenters questioned the means and frequency for communicating the school's refund policy to a student. It was recommended by one commenter that the refund policy be told to a student only prior to processing of a GSLP loan.

*Response.* These regulations do not require that a student be either specially counseled

or given specially prepared documents as to the school's refund policy. A school may comply with these requirements by including a clear statement of its refund policy in those publications it normally uses to inform students about school policies (i.e., school catalogues, bulletins and schedules). The regulations have been modified somewhat to require only that a school must give written notice of its refund policy, as discussed above, to prospective students and notice to all students when the policy changes. The proposed rules had required that the school inform each GSLP student prior to the student's enrollment each academic year.

*Comment.* Many commenters complained about the $100 limit on the reasonable fees that a school may retain to cover application, enrollment, registration and similar charges. Most thought it was too little and that it did not take into consideration separate expenses that a school must absorb related to room and board. One commenter stated this limit did not take into consideration deposits that some schools require to hold placements prior to registration

It was also suggested that rather than a flat $100, the acceptable amount a school may retain be based on 20% of tuition and fees.

*Response.* The final regulations have been modified to incorporate provisions that are responsive to some of the concerns of the commenters on this issue. The regulations now contain a provision to allow schools to retain deposits that amount to no more than 10% of the tuition and fees and 10% of the room and board charges, in addition to an application fee of up to $100, if a student withdraws any time within the 60-day period prior to the student's initial enrollment.

*Comment.* One commenter thought that the maximum amount a school should be able to retain under the heading of "reasonable fees" should be reduced from $100 to $25. That commenter also cited the inconsistency of proposed requirements under these regulations with the then proposed, now final, action of FTC that sets this limit at $75.

*Response.* In 1974, a maximum of $50 was proposed as the amount that a school could reasonably retain as non-returnable fees. Numerous comments were received at that time objecting to this amount as being too low. Based on those objections, the Commissioner decided to raise the amount to $100 in the 1975 final regulations. Similar objectives were raised to the $100 proposed on April 5th.

The Commissioner still feels that the $100 limit is adequate. This amount is a ceiling not a floor. Schools need not retain the $100. The Comissioner urges schools to consider this and to act accordingly in the best interest of their students when setting their refund policies.

In regard to the difference between the FTC requirements and the requirements set forth in these regulations: The Federal Trade Commission set forth final regulations that will become effective on January 1, 1980. The FTC's $75 limit on fees that a school may retain will affect approximately 1,500 proprietary trade, vocational and correspondence schools that are eligible for participation in the GSLP. In determining an acceptable fee retention limit that must apply to the total universe of schools participating in the GSLP, it is necessary to consider the situation of all schools. GSLP participating schools range from beauty schools to medical schools. Therefore, the Commissioner feels that the requirements in these regulations as modified are fair in view of the broader range of schools involved.

*§ 177.609 Determining the date of the student's withdrawal.*

*Comment.* A number of commenters requested liberalization of the leave of absence requirements. It was suggested that the approved leave of absence period be extended beyond the proposed 60 days to accommodate instances of student illness, pregnancy or enrollment in classes that do not resume on a 60-day cycle.

Two commenters recommended that schools be permitted to grant more than one leave of absence to a student without prior approval of the Commissioner.

*Response.* The regulations governing leaves of absence have been changed to allow leaves of absence of up to six months, if the school thinks that it is necessary because of the student's medically determinable condition or because the next period of enrollment begins more than 60 days after the first day of the leave of absence.

It should be noted that the leave of absence provisions now apply to higher education institutions. The Commissioner sees no reason to differentiate between vocational schools and institutions of higher education in regard to these requirements.

On the issue of granting additional leaves of absence without the prior approval of the Commissioner to a student who has received a GSLP loan the regulations have not been changed. The Commissioner feels that the liberalization of the length of time for which that student may be granted a leave of absence may satisfy what some commenters have perceived as a need for greater latitude for schools in granting leaves of absence to students who have received loans.

*Comment.* One commenter wanted to have the leave of absence provisions extended to include correspondence course students.

*Response.* The regulations have been changed to include correspondence course students under provisions for a one-time regular 60-day leave of absence and up to a 6-month leave of absence only because of the student's medically determinable condition.

*Comment.* Several commenters objected to the difference in treatment of vocational schools and institutions of higher education in regard to how a school must determine the student's date of withdrawal. These commenters suggest that the regulations be changed to treat these categories of schools the same.

*Response.* The suggestion has been adopted. Prior regulations mandated that vocational schools determine a student's withdrawal date based on the date of last attendance. This implied that vocational schools were required to take attendance. However, the Commissioner believes that since there are no requirements in the law that a school must take attendance, it is more reasonable to establish the same requirement for both vocational and higher educational institutions in this regard.

*Comment.* One commenter thought that "The date the school determines that a student has withdrawn" is too vague.

*Response.* The regulations have not been changed on this point. Since there is no requirement that a school take attendance, the Commissioner believes that the school's reasonable determination of withdrawal date must suffice in the case of a student who has not notified the school. However, schools should use a consistent method for making this determination. Any policy or practice in this regard is subject to review by the Commissioner.

*§ 177.610 Payment of a refund to a lender.*

*Comment.* One commenter stated that the proposed refund policy did not fully consider a school on a trimester system in which a student might drop out the first trimester with intentions to return to school in the third trimester. According to the proposed regulations the school would have to return the student's refund to the lender.

*Response.* The commenter is correct that in this situation a refund allocable to loan funds would have to be returned within 40 days after the school has determined that the student has withdrawn. However, if the student *formally* notifies the school of his or her intentions to withdraw and to return for the second trimester, the school may grant that student a leave of absence under the provisions of § 177.609(c), thereby negating the immediate requirement for returning monies to the lender.

*Comment.* It was commented by one school that the proposed regulations did not address refund situations in the case of students who transfer into a school using GSLP loan funds.

*Response.* A student may not use GSLP loan funds obtained for attendance at one school to pay for education at another school. Loans are made based on the cost of attendance less other aid received at the certifying school. A student who wishes to use GSLP funds to attend another school shall repay the lender whatever funds remain on the loan and reapply for a new loan to be used at the new school. A school will not be held responsible for the requirements concerning paying refunds to lenders if the student has misused the GSLP loan to transfer to that school.

*Comment.* Many schools objected to a role they perceive as that of "collection agents" in regard to requirements that refunds be paid directly to lenders.

*Response.* The Commissioner believes that schools cannot play the role of "passive partner" in their involvement in the GSLP. Schools play a far too critical role in many phases of basic program operations. This role includes activities such as determining the student's eligibility and cost of attendance, reporting changes in the student's enrollment status and handling the student's loan check. Furthermore, since the school is the only program participant that has initial control over refund monies, it is the most logical participant to also assure that refunded monies are returned to the lender.

Returning refunds directly to the lender is essential to the prudent operation of the program and serves to benefit all program participants. GSLP experience shows that

default and program abuse is most likely to occur in the case of an unscheduled interruption of a student's educational program that is combined with substantial loan indebtedness. To the extent that returning refund monies to a lender reduces the principal amount of the loan, it contributes to the probability that the student will not default.

*Comment.* One school commenter objected to the requirement that refunds be paid to lenders. The commenter called the requirement cost prohibitive since the school's fees and tutition are negligible.

*Response.* The Commissioner feels that no category of school can be given special exception to this requirement. Schools will now have the name of the lender. In addition, schools generally pay monies owed to students by check. The Commissioner fails to see what additional burden it will be upon a school to make a check payable to the lender instead of the student and to send that check to the lender.

*Comment.* Many commenters thought that schools should have the student's written authorization to avoid potential legal problems in returning refunds to a lender rather than to a student. One commenter was concerned that the return-of-refund authorization appears on the FISLP loan application but not on the loan applications for some guarantee agency programs.

*Response.* A school's authority to return a student's refund directly to a lender is contained in these regulations at § 177.610(a). This authority applies for schools participating under the FISLP or under a guarantee agency program.

A new FISLP application is currently being developed that will contain a statement in which the borrower acknowledges this authorization. This statement will appear in the application for the purposes of complete disclosure to a borrower of all terms of the loan and to remove any possible confusion this requirement may cause on the part of the borrower, the lender or the school. Guarantee agencies are encouraged to adopt the standard format for the new FISLP application. However, in cases where the application does not include this information, schools must still rely on the authority contained in these regulations.

*Comment.* Several commenters requested a clarification of the proposed provisions for determining what portion of a refund must be considered allocable to the GSLP loan and thereby must be returned to the lenders. Other commenters recommended alternative formulas for determining this amount.

*Response.* Many additional comments were received on this issue after the Office of Education's proposed administrative standards rules were published on August 10th. Those proposed rules invited comments on alternative methods for attribution of the refund. When the new formula is published in the final standards regulations it will apply to the GSLP.

*Comment.* Several commenters objected to the school's responsibility for refunding GSLP loan monies to a lender when the student obtained and used the loan funds to cover off-campus living expenses.

*Response.* A school must consider that, if a student has obtained financial assistance under one of the programs authorized by Title IV of the Higher Education Act of 1965, as amended, any refunds due that student must be applied in part to repaying monies obtained to pay for education costs under those programs. Even though a school may not have received any funds directly attributable to a disbursed GSLP loan as part of a tuition payment or payment of other direct school costs, the fact that the student received GSLP loan funds in order to cover any educational related expenses while in attendance at the school makes it necessary to return a properly apportioned amount of the refund to the lender.

*Comment.* One commenter questioned what the school must do with a refund in the case when the school does not know the identity of the lender.

*Response.* The school should attempt to obtain information about the lender from the student. If the student either cannot be reached or is uncooperative, the school should contact either the guarantee agency or the Commissioner to obtain a name and address of the lender.

*§ 177.611 Termination of a school's lending eligibility.*

*Comment.* One commenter suggested that the proposed regulations be changed to include a provision that the school's lending eligibility termination would take effect October 1, but in no case less than 120 days after the initial notification of the termination proceedings. The commenter contends that if a termination notice is received close to the October 1 effective date, the school would not be given sufficient time to challenge it.

*Response.* The regulations have not been changed. The Commissioner feels that the commenter has a legitimate concern, but more from the point of view of the effect on students awaiting disbursement of their loans, than denying time to a school. Any school that faces possible termination of its lending eligibility has sufficient advance warning by the knowledge of the condition of the loans it has been making and by the notice called for in the regulations. This time is sufficient for the school to make a case to argue against termination.

*Comment.* Two commenters complained that the ceiling limit for a school's default condition was too low and should be changed from 15 percent to 20 percent.

One of these commenters also thought that the definition of default should be changed from 120 days delinquent to 180 days delinquent to give the school a better rating if the school was holding many loans that were actually still collectible up to 180 days.

*Response.* Both provisions are statutory; therefore, neither provision could be changed. Section 435(g) of the Act sets the trigger for loss of a school's lending eligibility at 15 percent. Section 430(e) of the Act defines default as 120 days in the case of loans payable in monthly installments and 180 days in the case of loans payable less frequently.

*§ 177.612 Records, reports, and inspection requirements for participating schools.*

*Comment.* Numerous commenters criticized the proposed recordkeeping requirements as being administratively burdensome, too specific, duplicative of records that a lender must keep and costly in terms of storage space. There were also suggestions that GSLP recordkeeping requirements be made consistent with these requirements for the other Title IV programs. One commenter wanted to know if the required academic records had to be housed together with a student's financial aid records in the school's financial aid office.

*Response.* The recordkeeping requirements have been changed to reflect only those records that pertain to the school's processing of a student's loan application, loan funds and student employment placement. Other recordkeeping requirements are addressed in 45 CFR Part 168, the Administrative Standards regulations that apply to all OE administered student aid programs.

Academic records required under Part 168 and loan related records do not have to be maintained together in the school's financial aid office. Records pertaining to admissions, academic standing and attendance may be kept in their usual location at the school. The only requirement is that these records be available for review at the school.

*Comment.* Several commenters requested that the 5-year retention period for records and reports be reduced.

*Response.* The retention requirement has not been changed. The 5-year retention period is standard for all student assistance programs administered by the Office of Education.

*Comment.* One commenter recommended that the regulations require that the retention period for records and reports start at the end of the year in which the loan was received to be consistent with other aid programs. The proposed regulations set the starting date for the 5-year record retention after the student's graduation, withdrawal or failure to enroll.

*Response.* The final regulations still require that the retention period start when the student leaves school. While all programs require the 5-year retention, the requirements for when the 5 years must start vary from program to program; for instance, NDSL loan records must be maintained by the institution for 5 years after the entire amount of the loan has been repaid, cancelled or assigned. The College Work Study and SEOG programs require that records be kept 5 years after the date of the submission of the annual institution fiscal operations report. The obvious differences in the nature of each program warrant these varying standards.

*Comment.* One commenter objected to a non-federal audit requirement for the GSLP. The commenter described the nature of the GSLP as non-fiscal and suggested that this requirement be deleted because the verification of records performed as part of an institutional compliance review served essentially the same purpose.

*Response.* The requirement for a non-federal audit of GSLP records and transactions has not been deleted. The Commissioner feels that this audit is necessary for the fiscal integrity of the program, especially since schools will now be handling the majority of the loan checks. The verification of GSLP records as part of the institutional compliance reviews will continue as added fiscal protection.

*Comment.* Several commenters were concerned with the specific requirements for the new GSLP non-federal audit. These commenters wanted clarification as to (1) whether the initial audit for GSLP had to cover the entire period since the school began participation in the program, (2) whether the audit could be performed and reported jointly with the Campus Based programs audit to save schools time and money, and (3) whether the GSLP audit guide was forthcoming.

*Response:* Audits must be performed at least once every two years, although schools are encouraged to perform them annually. The initial non-federal audit required for GSLP should cover the 12-month period beginning on the July 1st which follows the effective date of these regulations. The November 1978 issue of the BSFA Bulletin contains instructions for planning acceptable audits for the Campus Based programs. With the exception of the specifics on audit due dates, these guidelines are applicable for planning a GSLP audit.

Audits for the GSLP and the Campus Based programs may be performed jointly to the extent that the requirements applicable to each of the programs are given sufficient review. The independent auditor must exercise judgment to assure that the audit report reflects all programs. The Commissioner encourages the use of combined sampling techniques whenever possible.

An audit guide specifically prepared for audit requirements under the GSLP is expected to be available by fall, 1979.

**Subpart G—Limitation, Suspension, or Termination of Lender Eligiblity Under the Federal Insured Student Loan Program**

§ *177.703 Informal compliance procedure.*

*Comment.* A commenter objected to the terminology "the Commissioner may call the matter to the attention of the lender and give the lender reasonable opportunity. . . ." The commenter stated that, if the Commissioner chooses to use the informal compliance procedure, it should be mandatory that the Commissioner notify the lender, while the word "may" implies that it is optional.

*Response.* The informal compliance procedure is a statement of procedures the Commissioner may follow, if it is appropriate in light of the lender's situation. Since the Commissioner has discretion in this matter, the word "may" has been retained. The Commissoner intends, in cases where emergency action is not required, to use the informal compliance procedures.

*Comment.* A commenter objected that § 177.703(b) allows the Commissioner to limit, suspend or terminate a lender prior to the completion of the informal compliance procedure in certain cases. The commenter felt that this violated the lender's "due process" rights.

*Response.* The regulation provides that "Limitation, suspension or termination procedures need not be delayed during the informal compliance procedure . . ." in certain cases. This does not mean that the lender will be limited, suspended or terminated immediately, but that the procedure contained in Subpart G for each of those actions may be initiated without waiting for the completion of the informal procedure. If the informal procedure results in correction of the problem, limitation, suspension, or termination procedures would be stopped.

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Part III

# Federal Election Commission

Access to Public Records

## FEDERAL ELECTION COMMISSION

**[11 CFR Part 4]**

### Public Records and the Freedom of Information Act

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** The proposed rule would amend the Federal Election Commission's regulation implementing the Freedom of Information Act (5 U.S.C. § 552) by adding to the list of documents available under 11 CFR Part 4. (See 44 FR 33368, June 8, 1979, and 44 FR 37491, June 27, 1979). In addition, the Commission seeks comments on the amount to be charged for reproducing documents provided under FOIA.

**DATE:** Comments must be received on or before October 17, 1979.

**ADDRESS:** Ms. Patricia Ann Fiori, Assistant General Counsel for Regulations and Legislation, 1325 K Street, Northwest, Washington, D.C. 20463.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Ann Fiori (202) 523-4143.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to the Commission's Freedom of Information Regulations are intended to address certain questions concerning the Commission's disclosure policy and practices which were raised in *Roeder* v. *The Federal Election Commission* (No. 79-0216 D.D.C. July 5, 1979). These amendments recognize that records made available for public inspection and copying under 2 U.S.C. §§ 438(a), 437(c), 437g(a)(6)(C) are also available by public inspection and copying under the FOIA regulations of the Commission.

The proposed amendment to 11 CFR § 4.9 does not state an amount to be charged for reproduction of documents subject to FOIA. A study is being conducted by the Commission's Office of Planning and Management to determine the direct costs of reproduction. The *Roeder* case, mentioned above, indicates a need for this study. In the interim, the Commission will continue its policy of charging a reproduction fee of 10 cents a page as set forth at 44 FR 3368, 3370 (June 8, 1978). See Also 40 FR 28580 (July 7, 1975). The final regulation will state a reproduction charge based on the Commission's study and comments received pursuant to this notice. Accordingly, the Commission specifically invites comment on what amount would be a reasonable charge and what items or factors might properly be included in calculating the "direct" cost of reproduction.

By separate notice published this date, the Commission is proposing regulations to implement the collateral public access provisions of the Federal Election Campaign Act of 1971, as amended, which shall replace the provisions which now appear in 40 FR 28589 (July 7, 1975).

Chapter I of Title 11, Code of Federal Regulations is amended as follows:

**§ 4.3 [Amended]**

1. Section 4.3 (b) and (c) are deleted and § 4.3(a) is designated § 4.3. The following new subparagraphs are added to 11 CFR 4.4(a).

**§ 4.4 Availability of records.**

(a) * * *

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indexes compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted thereto and responses issued by the Commission.

(12) With respect to enforcement matters under the provisions of 2 U.S.C. 437, the results of any conciliation agreement entered into by the Commission; and any determination by the Commission that no violation of the Act has occurred.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Opinions of Commissioners rendered in enforcement cases and General Counsel reports and 2 U.S.C. 437g investigatory materials in enforcement files 60 days after Commission has voted to close a case and to take no action: provided that no civil action under 2 U.S.C. 437g(a)(9) has been filed to compel the Commission to take further action. In the event that such civil action is filed, if the court sustains the Commission's action in closing the case, the materials will be made available thereupon. If the court orders the Commission to take further action, the materials will be made available when the case is again closed.

(15) Audit reports (if discussed in open session), minutes of open Commission meetings and agenda items.

(b) Public access to the materials listed in subparagraph (a)(10) through (a)(15) is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of part 5 of this chapter.

* * * * *

2. Section 4.4 (b), (c), (d) and (e) are redesignated § 4.4 (c), (d), (e) and (f), respectively.

**§ 4.9 Fees.**

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct costs of processing requests for those records enumerated in section 4.4(a) of this part computed on the basis of the actual number of copies produced and/or staff search time expended in fulfilling the particular request in accordance with the following schedule of standard fees (which shall be applied to all requests under this part):

| | |
|---|---|
| Record search time, first ½ hour free | |
| Each additional ½ hour | |
| Reproduction of documents, per page | |
| Transcript of tape recorded matter, per page | |

* * * * *

Dated: September 11, 1979.

Robert O. Tiernan,

*Chairman, Federal Election Commission.*

[FR Doc. 79-28704 Filed 9-14-79; 8:45 am]

BILLING CODE 6715-01-M

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**[11 CFR Part 5]**

### Access to Public Disclosure Division Documents

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** This notice contains the proposed Federal Election Commission Regulations setting forth procedures to implement the public access provision of the Federal Election Campaign Act of 1971, as amended, creating a new part to be added to 11 CFR. Existing Commission policy is set forth in the announcement appearing at 40 FR 580 (July 7, 1975). Dates: Comments must be submitted by November 16, 1979.

**ADDRESS:** Ms. Patricia Fiori, 1325 K Street, NW., Washington, D.C. 20463.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Fiori, (202) 523-4143.

**SUPPLEMENTARY INFORMATION:** The proposed rule is to govern the public inspection and copying of those Commission records made available for public inspection and copying under 2 U.S.C. 438(a), 437f(c), 437g(a)(6)(C). By separate notice published this date the Commission is setting forth certain proposed amendments to its regulations implementing the collateral public access provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552,

as amended, which presently appear at 44 FR 33368 (June 8, 1979) and 44 FR 37491 (June 27, 1979).

This proposed rule substantially parallels the Commission's aforementioned FOIA regulations; however, in light of the differences in the access provisions of the FOIA and Federal Election Campaign Act (i.e., with respect to the particular Commission records subject to the two statutes), the Commission deems it appropriate to maintain separate yet consistent regulations governing public access to the affected materials. Consistent with the provisions of the aforementioned statutes, the FOIA regulations of the Commission are somewhat broader in scope than this proposed rule, and the Commission documents publicly available under FOIA regulations may not necessarily be publicly available under this rule.

Proposed § 5.6 does not state an amount to be charged for reproduction of documents subject to the Federal Election Campaign Act. A study is being conducted by the Commission's Office of Planning and Management to determine the direct costs of reproduction. The recent case of *Roeder v. The Federal Election Commission* (Civ. #79-0216 D.D.C. July 5, 1979) indicates a need for this study. In the interim, the Commission will continue its policy of charging a reproduction fee of 10 cents a page as set forth at 40 FR 28580 (July 7, 1975).

The final regulation will state a reproduction charge based on the Commission's study and comments received pursuant to this notice. Accordingly, the Commission specifically invites comment on what amount would be a reasonable charge and what items or factors might properly be included in calculating "direct" cost of reproduction.

Chapter I of Title 11 Code of Federal Regulations is amended by the addition of the following new part:

## PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

Sec.



Authority: 2 U.S.C. 438(a)(4), 437(f)(c), 437g(a)(6)(C) and 31 U.S.C. 483a.

### § 5.1 Definitions.

(a) "Commission" means the Federal Election Commission established by the Federal Election Campaign Act of 1971, as amended.

(b) "Commissioner" means any one of the six appointees confirmed by the Senate who is a voting member of the Commission.

(c) "Request" means to seek access to Commission materials subject to the provisions of the Federal Election Campaign Act of 1971, as amended.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, and 1976, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) "Public Disclosure Division" of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 U.S.C. 438(a)(5), 437f(c) and 437g(a)(6)(C).

### § 5.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) Nothing herein shall be deemed to restrict the public availability of Commission records falling outside provisions of the Act, or to restrict such public access to Commission records as is available pursuant to the Freedom of Information Act and the rules set forth as Part 4 of this chapter.

### § 5.3 Scope.

(a) The regulations in this part implement the provisions of 2 U.S.C. 438(a)(4), 437f(c) and 437g(a)(6)(C).

(b) Public access to such Commission records as are subject to the collateral provisions of the Freedom of Information Act and are not included in the material subject to the Act (enumerated in § 5.4(a) of this part) shall be governed by the rules set forth at Part 4 of this chapter.

### § 5.4 Availability of records.

(a) In accordance with 2 U.S.C. 438(a)(4), the Commission shall make the following material available for public inspection and copying through the Commission's Public Disclosure Division:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designation of campaign committees and the indexes compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted thereto and responses issued by the Commission.

(3) With respect to enforcement matters under the provisions of 2 U.S.C. 437g, the results of any conciliation attempt, including any conciliation agreement entered into by the Commission that no violation of the Act has occurred.

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel reports and 2 U.S.C. 437g investigatory material in enforcement files 60 days after the Commission has voted to close a case and to take no action: provided that no civil action under 2 U.S.C. 437g(a)(9) has been filed to compel the Commission to take further action. In the event that such civil action is filed, if the court sustains the Commission's action in closing the case, the materials will be made available thereupon. If as a result of the judicial review the Commission takes further action, the materials will be made available at such time as the matter is finally closed.

(b) The provisions of this part apply only to existing records; nothing herein shall be construed as requiring the creation of new records.

(c) In order to ensure the integrity of the Commission records subject to the Act and the maximum availability of such records to the public, nothing herein shall be construed as permitting the physical removal of any Commission records from the public facilities maintained by the Public Disclosure Division other than copies of such records obtained in accordance with the provisions of this part.

(d) Release of records under this section is subject to the provisions of 5 U.S.C. 552a.

### § 5.5 Request for records.

(a) A request to inspect or copy those public records described in § 5.3(b) may be made in person or by mail. The Public Disclosure Division is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, Northwest, Washington, D.C. 20463.

(b) Each request shall describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located with a reasonable amount of effort. A requestor will be promptly advised if the requested records cannot

be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Requests for copies of records not available through the Public Disclosure Division shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463. Requests for Commission records not enumerated in § 5.4(a) of this part shall be treated as requests made pursuant to the Freedom of Information Act (5 U.S.C. 552) and shall be governed by 11 CFR, Part 4. In the event that the Public Disclosure Division receives a written request for access to materials falling outside § 5.4(a) of this part, it shall promptly forward such request to the Commission FOIA officer for processing in accordance with the provisions of part 4 of this chapter.

**§ 5.6 Fees.**

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for the staff time spent in locating and reproducing such records. The fee to be levied for services rendered under this part shall not exceed the Commission's direct cost of processing requests for those records enumerated in § 5.4(a) of this part, computed on the basis of the actual number of copies produced and/or staff search time expended in fulfilling the particular request, in accordance with the following schedule of standard fees (which shall be applied to all requests under this part):

(1) Record search time, first ½ hour Free.....
(2) Each additional ½ hour.....
(3) Reproduction of documents, per page.....
(4) Transcript of tape-recorded matter, per page.....

(b) In the event the anticipated fees for pending requests under this part from the same requestor exceed $25.00, such records will not be searched for or made available, nor copies furnished unless the requestor pays or makes acceptable arrangements to pay the total amount due, or if the fee is not precisely ascertainable, the approximate amount due upon the completion of the Commission's search and/or copying. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available or a denial of same is notified.

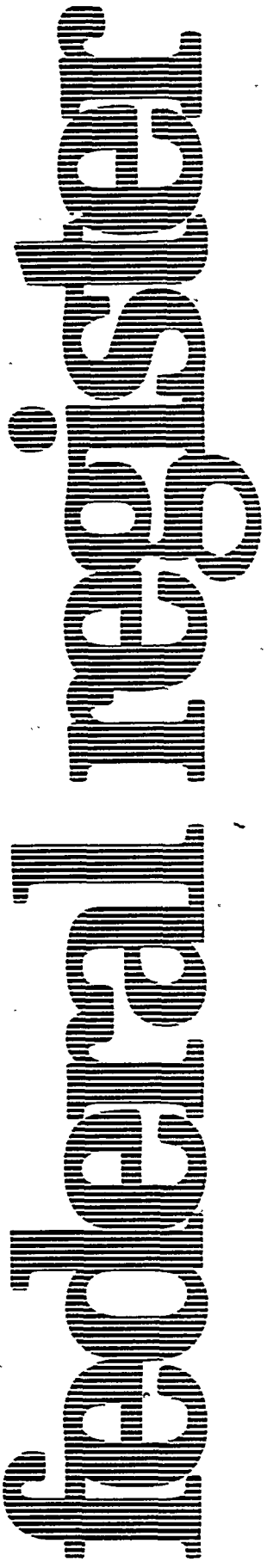
(c) The Commission may reduce or waive payments or fees hereunder if such reduction or waiver would be in the public interest.

Dated: September 11, 1979.

Robert O. Tiernan,

*Chairman, Federal Election Commission.*

[FR Doc. 79-28707 Filed 9-17-79; 8:45 am]
BILLING CODE 6715-01-M



Monday
September 17, 1979

Part IV

# Department of Agriculture

Forest Service

National Forest System Land and Resources Management Planning

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 219**

## National Forest System Land and Resource Management Planning

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is issuing final regulations to guide land and resource management planning in the National Forest System. These rules require an integration of planning for National Forests and Grasslands, including the timber, range, fish and wildlife, water, wilderness, and recreation resources, together with resource protection activities and coordinated with fire management and the use of other resources, such as minerals. These rules will implement provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

**DATE:** Effective October 17, 1979.

**ADDRESSES:** A copy of these final rules may be obtained from: Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013, 202-447-6697.

### 1. Purpose

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476, et seq.), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949, et seq.) (16 U.S.C. 1601-1614), specifies that an interdisciplinary approach will be used in land and resource management planning and that there will be a periodic review of the planning process, followed by any necessary amendments, to keep it current with statutory requirements. These statutes also provide for the establishment and revision of national, regional and local resource goals and objectives which are based on a periodic assessment of the future supply and demand of renewable resources from public and private forest and range lands. Achievement of these goals and objectives is the purpose of the planning process provided in these regulations. These acts also require public participation in the development, review and revision of land and resource management plans, and the coordination of such plans with State and local units of government and other Federal agencies.

These rules apply to all land and resources management plans developed hereafter for the National Forest System.

These rules require an integration of planning for national forests and grasslands, including the timber, range, fish and wildlife, water, wilderness, and recreation resources, together with resource protection activities and coordinated with fire management and the use of other resources, such as minerals. By October 1985, plans required by these regulations should be developed for all National Forest System lands.

### 2. Introduction

Public participation was extensive and was a major factor in developing the final regulations. The public was invited to comment on the first draft of the regulations which appeared in the Federal Register August 31, 1978 (Vol. 43, No. 170). Two public hearings were also conducted specifically to obtain views. From the initial inception of work to develop the regulations through to the present time, the Forest Service and the Department have maintained an open-door policy with the public and interest groups to obtain information as well as to explain work and progress. Eighteen Committee of Scientists' meetings were open to the public, and a total of 737 individual responses containing 5,373 distinct references to various parts of the August 31, 1978 draft regulations were received, a substantial number of which were elaborate, detailed, and explicit. Included were letters from members of Congress, Federal, State and local governments, representatives of various interest groups, as well as the general public. As a consequence it was decided to revise the first draft of the regulations (August 31, 1978) and to republish them accompanied by a Draft Environmental Impact Statement. This appeared in the Federal Register, Vol. 44, No. 88, May 4, 1979. Since then another 245 responses have been received containing 1,581 distinct comments which have been analyzed and considered during the preparation of the final regulations and Final Environmental Impact Statement which follows this Summary of Public Comment Analysis.

The Committee of Scientists has prepared a Supplemental Final Report to the Secretary of Agriculture as to the scientific and technical adequacy of the May 4, 1979 draft of regulations. This report was submitted to the Secretary on August 17, 1979, and is printed as Appendix E of the Final Environmental Impact Statement.

### 3. Summary of Public Comment Analysis

A total of 245 comments was submitted containing 1,581 specific comments on the May 4 proposed rules. The specific comments break down into the following categories: 356 individual citizens; 701 organizations; 157 Government agencies; 367 Department and Forest Service. The majority of comments received were in letter form. Most comments were specific and succinct, and addressed only a few concerns, but several were, by comparison lengthy, detailed, and complex. All suggestions have been reviewed, analyzed, and considered in preparation of these regulations and supporting Final Environmental Impact Statement.

Comments are available for review at the Office of Land Management Planning, Forest Service, USDA, 14th and Independence Ave., S.W., Washington, D.C.

### Section-by-Section Comments

*Section 219.1—Purpose*

This section received limited public comment. Comments suggested adding to environmental impacts the words "economic" and "social." "Economic" and "social" were added as well as replacing the use of "preferences" with "changing, social, and economic demands."

The Committee of Scientists and others recommended that a statement be added recognizing that the national forests are ecosystems and their management requires consideration of the interrelationships of the various environmental factors. This concept has been included under planning principles.

Comments also suggested that consideration of the relationship of mineral resources to renewable resources and preservation and protection of religious freedoms of American Indians be included under the planning principles. These have now been added to the final regulations.

*Section 219.2—Scope and Applicability*

There were very few comments on this section. There was a question on the meaning of "special area authorities." This was not changed in the regulations since examples of these authorities were listed in the section. The applicability of the regulations was clarified, however, to explicitly include waters as well as lands in the National Forest System.

*Section 219.3—Definitions*

Many comments requested changes in the published definitions as well as the

addition of many new definitions. The Department reexamined the definitions section and a number of changes were made. Definitions were added for: "base timber harvest schedule", "biological growth potential", "goods and services", "management prescription", and "planning area."

The following terms were redefined because of comments received for clarity: "diversity", "management direction", and "management practice." "Environmental assessment" was changed to "environmental analysis" to coincide with the terminology used in the Council on Environmental Quality guidelines. "Environmental documents" was redefined to include a list of documents required by 40 CFR 1508.10.

Minor changes in wording were made to the following terms: "capability", "Responsible Forest Service Official", and "standard." Some respondents wanted to change the definition of "multiple-use" and "sustained-yield of the several practices and services." These were not changed since they were defined by the Multiple Use-Sustained Yield Act of 1960. There were requests for definition of additional terms such as "wildlife", "recreation", "range", "wilderness", "facilities", "mitigating measures", "reasonable", "minimize", and others. Terms such as these, which are to have the standard dictionary definition or were in common usage, were not redefined for purposes of these regulations.

*Section 219.4—Planning Levels*

As in the previous August 31, 1978 draft, public comment on the May 4, 1979, proposed NFMA regulations continued to point out the need for a clearer description of the iterative nature of the three levels of planning and the process for developing and selecting the RPA Program and the relationships between the Program and the various levels of planning. Therefore, the "national" level of planning was completely rewritten in this section in response to the requests for clarification of the process for developing and selecting the RPA Assessment and Program. Section 219.9, Regional Planning Procedure, was strengthened to explain how the regional plan will implement RPA Program goals and objectives as well as provide information for the National Forest System portion of the assessment capability. In addition, language was deleted concerning transfer of information among planning levels (219.4(c)(1) through (4)), because it was confusing and appeared conflicting with other provisions. The concepts in 219.4(c) are now covered under Sections 219.5, Regional and Forest Planning Process, and 219.9, Regional Planning Procedure.

*Section 219.5—Planning Process*

This section was retitled "Regional and Forest Planning Process" to more correctly portray its coverage. Some of the comments pointed out that there was some confusion and misconception that this process applied to the formulation and establishment of RPA goals and objectives.

With respect to economic analysis practices, many commentors pointed out that the economic analysis criteria including the discount rate of interest should be established as soon as possible. The Forest Service plans to be responsive to this need through the issuance of manual and handbooks before December 1979.

Inventory data and information collection was of prime concern to the Committee of Scientists and the general public as well. These comments centered around the determination of adequacy of the data, data collection procedures, compatability requirements to obtain uniformity among forests, and the need to include criteria for coordination and cooperation with other agencies for data collection, storage, and evaluation. The Department is concerned that too much emphasis has been placed on the quantity of data gathered instead of what data are actually necessary to do planning effectively. Therefore, in changing final regulations, emphasis has been placed on the kinds and quality of data necessary. Acquisition of new data and information will be scheduled and planned so that it is appropriate for the decision to be made.

The necessity for consistency in data collection procedures between all levels of planning was addressed by the public. The Department recognized the need for common data definitions and standards to assure uniformity of information between the three levels of planning and added provisions for this to the regulations. These data definitions and standards will be established by the Chief, Forest Service. In addition, these regulations require that information be developed from common data definitions and standards and will be used to prepare the 1990 and subsequent Assessments and Programs.

The paragraph relative to the Formulation of Alternatives has been restructured upon recommendation of the Committee of Scientists. As previously written, some of the criteria was too stringent and unclear as to intent.

The public also expressed confusion with the term "no-action" alternative. The "no action" alternative is required by CEQ regulations. The "no action" alternative language was expanded to state that it is the "most likely condition expected to exist in the future if current management direction would continue unchanged".

Concern was expressed over using cost-effectiveness as a criterion of formulation of forest alternatives and that "cost-effectiveness" was not defined. The term cost-effectiveness has been changed to "cost-efficient" to display the intent to maximize the present net worth of each alternative subject to meeting the objectives of the alternative. The criterion has been modified to include the expression "to the extent practicable" to recognize that judgment must be used in the practical application of the "efficiency" criterion to a management task as complex as a forest plan.

The Committee of Scientists suggested that the phrase "restore renewable resources" was unclear as used in the criterion that "all alternatives will provide the treatments needed to restore renewable resources." This criterion has been reworded to clarify that each alternative will provide for the orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative.

The Committee of Scientists recommended that language be added under Estimated Effects of Alternatives, which will require the interdisciplinary team to display how the regional and forest plans respond to the range of goals and objectives assigned from the RPA Program. This language has been added to the final regulations.

Also in response to comments received, two additional anticipated effects of implementation of each alternative were added:

(1) The relationship of expected outputs to the forest production goals in the current regional plan and

(2) The energy requirements and consideration of potential effects of various alternatives.

The Committee of Scientists pointed out that items (ii) and (iv) of paragraph (g) in the May 4 draft were actually in conflict; therefore, item (iv) was deleted.

It was not clear if the term "plan implementation" was meant to identify forest, regional, or national planning. The language was, therefore, rewritten to clarify reference only to regional and forest planning implementation.

*Section 219.6—Interdisciplinary Approach*

Public comments emphasized the need to establish operating procedures for the interdisciplinary team, as well as specifically state the authority and function of the team. The final regulations respond to this need by specifying that the team will ensure "coordinated planning which addresses outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness opportunities." Further, the language was added that the planning team activities must be consistent with the principles of the Multiple Use-Sustained Yield Act and those principles stated in § 219.1. The above is in keeping with the concept and intent suggested by the Committee of Scientists. Operating procedures found throughout the regulations will be supplemented by a work plan for each team.

*Section 219.7—Public Participation*

The direction given for public participation was generally acceptable to the public, with the exception of the appeals provisions in § 219.7(o). The public generally commented that the limitation on administrative appeals of planning decisions would place an undesirable restriction on public participation.

The forest plan appeals provision has been completely rewritten and moved to § 219.11 to allow forest plans to be appealed under § 211.19 of this Chapter if the potential appellant was involved in the public participation phase and commented on the draft environmental statement/forest plan with respect to the specific issue being appealed. Intermediate decisions made during the planning process up to the time the plan is approved are not appealable.

Under the final regulations, regional plans are not subjected to the appeals procedure (CFR 211.19). However, within 45 days of the decision of the Chief, Forest Service, to approve or disapprove a regional plan, any person may request the Chief to reconsider his decision. The Chief must respond within 30 days to the request for reconsideration. The reconsideration provision relating to regional plans has been placed in § 219.9.

*Section 219.8—Coordination of Public Planning Efforts*

The majority of comments expressed were in agreement with this section as proposed in the May 4 draft.

The Committee of Scientists suggested that a new subsection be added to include the requirement that a program of monitoring and evaluation will be conducted that includes consideration of the effects of national forest management on land, resources, and communities adjacent to or near the national forest being planned. This has been added in order to further coordinate Forest Service activities with those on adjoining lands.

*Section 219.9—Regional Planning Procedure*

In response to comments that the May 4 proposal did not adequately deal with the visual resource, the following references to such have been made throughout the regulations and are noted as follows: 219.3(i), 219.5(g)(1), 219.5(h), 219.6(a), 219.10(b)(13), 219.12(i)(1)(ii), 219.12(i)(4), 219.13(b)(6), 219.13(b)(7), 219.13(c)(6), 219.13(d)(2)(i), 219.13(g).

Specifically, § 219.12(b)(6) now states that "The visual resource will be inventoried and evaluated as an integrated part of the forest planning process, addressing both the landscape's visual attractions and the public's visual expectation."

The comments concerning administrative appeal of regional plans are addressed in this analysis under § 219.7.

*Section 219.10—Criteria for Regional Planning Actions*

The title was changed to "Regional Planning Actions" at the suggestion of the Committee of Scientists. The section deals both with decision criteria and process procedures; therefore, the Committee felt the use of the term "criteria" to be inappropriate.

Public comments indicated that the list of management concerns should include consideration of meeting the RPA Program. In response to these comments, implementation of goals and objectives of the RPA Program (through regional policies and goals) has been clarified. Section 219.10(c) has been rewritten to the effect that, consistent with regional and forest resource capabilities, regional plans will implement the goals and objectives of the regional policies and goals, assigning resource production objectives to each forest area as well as providing information for the national assessment.

Some comments advocated the establishment of a definite minimum biological growth figure for timber harvesting (§ 219.10(d)(2)); a minimum of 50 cubic feet/per acre/per year was suggested. the 50 cubic feet/per acre/per year standard was rejected as it was felt that this cutoff point might arbitrarily eliminate viable timber production possibilities prior to evaluation of the ability of lands to meet specific forest objectives. The historical standard for definition of commercial forest land, 20 cubic feet/per acre/per year, will be used. The Department feels this provides a useful screen which eliminates land from further consideration which definitely does not qualify for commercial timber production, while not arbitrarily foreclosing on reasonable timber production possibilities.

Clarification of the need for, or lack of the need for, the gathering of new data was an issue. This is discussed under § 219.5 of this Analysis of Public Comment.

Comments indicated there was some confusion as to the order of planning—are regional or forest plans developed first? The regulations were not changed in this regard as it is the intent that a regional plan should be developed before the forest plans. However, during the transitional period the regulations allow for the development of forest plans prior to regional plans, but require that forest plans be reviewed upon completion of the regional plan and amended accordingly.

*Section 219.11—Forest Planning Procedure*

Comments on documentation requirements indicated a concern that flexibility of line officers would be seriously and adversely affected by having to justify and document every action. The NFMA strengthens and refines the planning process by ensuring that related activities are comprehensive and fully open to the public. The comments made which would weaken this requirement could not be accepted since the legislation requires public participation in the planning process, and documentation required by the regulations will serve to show how the responsible employee arrived at his/her decision.

Section 219.11(4) contains the new language on appeals of forest plans, which is addressed in detail in discussion of § 219.7 of this analysis.

There was some confusion whether the forest plan is a separate document or the *preferred* alternative in the EIS. The plan is the *selected* alternative in the final EIS. It will be expanded and published as a separate document with the EIS. The clarified wording in §§ 219.9 and 219.11 of the regulations should help clarify this section.

*Section 219.12—Criteria for Forest Planning Actions*

This section was changed to "Forest Planning Actions" for the reasons cited in § 219.10 of this analysis. Approximately 20 percent of all

comments were directed to this section, the majority of which concerned two issues: (1) lands not suitable for timber production and (2) departures from nondeclining even flow.

It was suggested that misinterpretation and confusion could result from the requirement to classify as "unavailable" those lands which had been "administratively withdrawn from timber production." Therefore, this language was rewritten as follows: ". . . legislatively withdrawn or administratively withdrawn by the Secretary or the Chief, Forest Service," indicating the inclusion only of those lands which have gone through a withdrawal process approved by the Secretary or Chief. Thus, there should be no misinterpretation that these lands would include marginal lands or special components in current forest plans.

There were considerable comments concerning the identification of lands suitable for timber production (§ 219.12(b)(2)). The timber industry contends that economic criteria used to determine suitability should be applied in a way which identifies as unsuitable only those lands which are not economically viable timber production opportunities in their own right (before discretionary environmental and multiple-use constraints are applied). They feel it is important that criteria for determining suitability eliminate the economic burden for discretionary environmental and multiple-use contraints. It was felt that if this is not done, the economic viability of management is distorted by the decision to emphasize other objectives. The industry stated that this becomes a self-fulfilling cycle which plays into the hands of those who, on one hand, advocate maximum emphasis to nontimber objectives on the national forests and, on the other hand, complain that timber management is not a viable economic proposition there.

The environmental commentor guardedly approved of the strengthened economic criteria for determining lands suitable for timber production. However, it was pointed out that there was a serious danger in the ranking procedure proposed. The ranking procedure presents a powerful tool for planners that may have a negative result. The concern is that it was possible that once lands suited for timber production are ranked, planners would feel compelled to develop land allocation proposals that devote all of the higher ranking lands to timber production, even though such lands may be critical to maximizing forest benefits other than timber production or may be relatively dangerous to log in light of soil sensitivity data. In other words, the potential timber land rankings may end up dictating land allocation patterns for all of the resource uses, particularly in light of the pressure to meet assigned timber production goals with a limited budget. To avoid this return to functionalism in resource planning, it was recommended that separate rankings of the relative suitability of lands for all other resources and uses should be required. There were many other suggestions on language changes, including recommendations by the Committee of Scientists. Considering these comments and the recommendations of the Committee of Scientists, § 219.12(b)(2) has been rewritten using mostly the recommendations of the Committee of Scientists.

The difference between the Department procedure for identifying unsuitable lands and the Committee of Scientists' recommendations concerns the preliminary economic analysis of lands prior to formulation and evaluation of forest alternatives. Specifically, the Committee of Scientists has recommended ranking the lands by benefit-cost criteria to establish their relative economic efficiency in meeting timber goals which have been assigned to the forest through the regional plan. Although there are some technical difficulties in carrying out the Committee's proposal, the main Department objection to the procedure is that, without knowledge of the multiple-use objectives of each specific forest alternative, the ranking will not generally correspond to the most cost-efficient method of meeting overall forest objectives. As only timber benefits were to be included in the preliminary efficiency analysis, a one-to-one correspondence between the preliminary ranking and final land allocation for a forest alternative would be achieved only in the absence of multiple-use objectives and harvest flow constraints.

The Department feels that useful information can be generated before alternative formulation and evaluation without being prescriptive. The purpose of the preliminary analysis would be to provide the background costs and benefits of timber production for a range of management intensities to permit flexibility in meeting overall forest objectives efficiently during alternative evaluation.

The Department preliminary analysis proposes that the planning area be stratified into categories of similar management costs and returns considering the biological and physical conditions of the site and transportation. Costs and returns for timber production would be calculated for a range of management intensities for each category. The management intensity which maximized the present net worth for each category would be identified, but ordering of categories would not be required, nor would the adoption of the timber profit maximizing management intensity.

The costs and returns for the range of management intensities for each category would be considered, along with other resource information, in formulating alternatives and in determining the relative suitability of lands within the planning areas to meet the multiple-use objectives for each forest alternative in a cost-efficient manner. Other wording changes suggested by the Committee in the May 4 proposed regulations have been materially adopted.

One common recommendation was that the regulations clearly state that benefits must exceed costs in order for lands to be classified "suitable for timber production." This recommendation was not adopted since the regulations require that, based upon consideration of management objectives, lands will be tentatively classified not suited for timber production if they are not cost-efficient in meeting forest objectives.

Many asked for clarification of "assurance that lands can be restocked within 5 years." Some felt the time-frame too long; however, the NFMA specifically allows for restocking within 5 years after harvest. This requirement has been referenced throughout the regulations.

It was recommended that the measure of direct benefits used in the preliminary economic analysis be clarified. The term "expected future stumpage prices" has been expanded to "expected gross receipts to the government." The following language has been added for clarification: "Such receipts will be based upon expected stumpage prices from timber harvest considering future supply and demand situation for timber, timber production goals of the regional plan, and guidelines to be developed through direction in § 219.5(c)(6)."

A high level of interest has been expressed concerning the use of "local economic stability" as a criterion for examination of a departure alternative. Some public comment felt that this was "illegal" because the words "local economic stability" do not appear directly in NFMA. Other public comments refer to the legislative history and suggest that considerations of "local

economic stability" is one objective of multiple use management. There is no limitation in NFMA on the reasons for departures, but the act does provide that the Secretary's approval of a departure must be to meet overall multiple-use objectives, provided that any such departure "must be consistent with multiple-use management objectives of the land management plan." The Multiple Use-Sustained Yield Act defines multiple-use as "the management of all the various surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people . . .." The Department feels the definition within the Multiple-Use Act supports the use of local economic stability" as one factor for examination of a departure alternative. Therefore, the regulations continue to use "local economic stability" as a criterion for examination of a dependent alternative.

It was further suggested, and adopted, that the word "overall" which appears in the act, be used as a modifier to "multiple use objectives".

Under the wilderness provisions of § 219.12(e), there was some confusion over the terminology "initial generation of forest plans." This paragraph was rewritten for clarity and provides for uses other than wilderness for those lands released for nonwilderness classification pursuant to RARE II decisions.

The Committee of Scientists expressed satisfaction with respect to the treatment of wilderness in the regulations.

Comments on the fish and wildlife provisions were directed mainly toward questions regarding indicator species; some suggested that the language be changed to include invertebrates as indicator species. This request was met.

There was some criticism that the proposed rules did not adequately ensure consideration in the decision process of range, recreation, soil and water, minerals, and the visual resource. However, the Committee of Scientists felt these sections were adequate and the Department agrees. Only minor word changes have been made to these sections.

As noted in § 219.9 of this analysis, the visual resource has been addressed in the regulations to a greater extent. It has been added to the list of requirements which the forest plan must specifically address. (§ 219.12(i)(6))

*Section 219.13—Management Standards and Guidelines*

Approximately 20 percent of all comments addressed this section, in particular the maximum size limitation of openings and protection of riparian areas.

Comments on the size of openings were evenly divided between those who oppose the national limits proposed in the May 4 draft regulation and those who favored these limits. These limits have been retained and a maximum size limit of 80 acres for yellow pine types in certain southern states has been added to be responsive to special needs identified in the Southern Region. (See § 219.13(d)(2)).

The comments on the protection of riparian areas were also equally divided. Section 219.13(e) was rewritten to include that this special attention area will include at least the riparian ecosystem. This was in response to comments that the area protection should be variable and should correspond to the recognizable area dominated by riparian vegetation. Factors have been listed which will be considered in the determination of what management practices may be undertaken in these areas.

Changes in the paragraphs on diversity were made to reflect the intent of the National Forest Management Act; e.g., to deal with plant and animal communities and tree species as recommended by the Committee of Scientists and several commentors.

As was pointed out in the Committee of Scientists' report, diversity is one of the most difficult issues with which the regulations deal. One environmental group stated that the May 4 draft still did not meet the congressional mandate that the regulations address "steps" to be taken to provide for diversity. Management practices which enhance diversity should be described, and the influence of silvicultural systems on forest structure and diversity should be discussed. They also stated that it was particularly important that the impact of rotation age on the development and stability of forest ecosystems be addressed. This recommendation was rejected by the Department as it would be virtually impossible to describe each management practice and forest structure for the variety of ecosystems involved throughout the Nation. This will be covered by each forest plan as directed by the regulations in § 219.13(g).

The timber industry comments stated that direction in §§ 219.13(b)(5) and 219.13(g) goes far beyond the intent of law. In addition, they stated that the two sections are in conflict; § 219.13(b)(5) directs that management practices preserve diversity of "endemic and desirable naturalized plant and animal species similar to those existing in the planning area", and § 219.13(g) directs that management practices "preserve and enhance species and communities diversity similar to that which would be expected in an unmanaged part of the planning area." Industry stated that both of these objectives cannot be achieved simultaneously. Their comments further stated that section 6(g)(3)(B) was concerned primarily with type conversion—specifically conversion of hardwoods to pine in the South. They felt this was what should be focused on.

In the Committee of Scientists' report, which is printed with the Final Environmental Impact Statement, the Committee has pointed out that they also feel the Forest Service has created problems for itself in rewriting two sections relating to diversity and to some extent, distorted the intent of the provisions contained in their recommendations. It was the Committee's opinion, that Congress used the term diversity to refer to biological variety rather than any of the quantitative expressions now found in the biological literature.

Upon the advice of the Committee of Scientists and the comments from the interest groups, § 219.13(b)(5) was revised by eliminating the conflicting language and referring to paragraph (g). Paragraph (g) was rewritten incorporating the Committee's recommendations, specifically providing that "The selected alternatives will provide for diversity of plant and animal communities and tree species to meet the overall multiple-use objectives of the planning area." The concepts recommended by the Committee have been incorporated except that the words "unmanaged forest" have been replaced with "natural forest."

*Section 219.14—Research*

The language was revised to better reflect suggestions of the Committee of Scientists to stress the importance of research in meeting the needs of the National Forest System. The annual report required at the national level will be prepared with assistance from regions and forest and range experiment stations.

*Section 219.15—Revision of Regulations*

It was generally accepted that the 5-year interval review of the regulations was appropriate.

*Section 219.16—Transition Period*

Comments were few, and this section was generally acceptable to the public as was written in the May 4 proposal.

Dated: September 12, 1979.

Bob Bergland,

*Secretary.*

Final Environmental Impact Statement

*Final Regulations for National Forest System Planning, 1920 Land Management Planning, Forest Service. USDA*

Lead Agency: United States Department of Agriculture, Washington, D.C. 20013.

Responsible Official: Bob Bergland, Secretary of Agriculture, Washington, D.C. 20013.

For Further Information Contact: Charles R. Hartgraves, Director, Land Management Planning, USDA Forest Service, P.O. Box 2417, Washington, D.C. 20013 (202-447-6697).

Abstract: This Final Environmental Impact Statement (FEIS) analyzes and evaluates alternative sets of proposed regulations developed in response to Section 6 of the National Forest Management Act and describes the preferred alternative which appears Appendix E. The regulations prescribe the process for preparation of all land and resource management plans developed hereafter for each administrative unit of the National Forest System. Also prescribed, and integrated into the planning process, are a number of technical standards which govern the conduct of management practices. The FEIS describes the conceptual basis for the planning process described in the proposed regulations, and the issues central to their need.

The alternative regulations are procedural. Although their promulgation would have only indirect effects on the quality of the human environment, there are important policy matters to consider in the use and application of a given alternative. This is especially true in the application of technical standards (specified management standards and guidelines) whose impacts are variable depending upon where they are applied. The qualitative nature of effects is addressed in this Final Environmental Impact Statement. Specific impacts will be discussed in detail and in quantitative terms in regional and forest level plans prepared under these proposed regulations. An environmental impact statement will be prepared for such plans pursuant to Council on Environmental Quality and Forest Service National Environmental Policy Act regulations.

Summary—Final Environmental Impact Statement

*Proposed Regulations for National Forest System Resource Planning, 1920 Land Management Planning, Forest Service, USDA*

Responsible Federal Agency: United States Department of Agriculture, Washington, D.C. 20013.

Responsible Official: Bob Bergland, Secretary of Agriculture, Washington, D.C.

For Information Contact: Charles R. Hartgraves, Director, Land Management Planning, USDA Forest Service, P.O. Box 2417, Washington, D.C. 20013 (202/447-6697).

Date of Transmission to EPA and to the Public: Draft: May 7, 1979. Final: September 17, 1979.

Summary

I. The Department of Agriculture will issue regulations to guide land and resource management planning for the National Forest System. This Final Environmental Impact Statement analyzes and evaluates alternative sets of proposed regulations and identifies the Preferred Alternative (see Appendix F). The alternatives were developed in response to the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA).

To be understood, the regulations have to be read in their entirety. They are complex. Thus, many requirements can be fully understood and appreciated only upon a complete reading of several sections to ascertain relationships between requirements in one and those in another.

The NFMA requires that regulations be issued which describe the process for developing and revising land management plans for administrative units of the 187-million-acre National Forest System (NFS). The alternative regulations explain the process and contain management guidelines and standards which relate to the national, regional, and local resource goals established by the Forest Service Renewable Resources (RPA) Program. The process and guidelines described insure in various ways that economic, environmental, and ecological aspects are consistent with the RPA, Multiple Use-Sustained Yield Act, and other statutes which affect Forest Service activities. The regulations provide for integrated planning throughout the NFS for the management, protection, and use of timber, range, fish and wildlife habitat, water, recreation, and wilderness resources. The integration is accomplished with the aid of interdisciplinary teams, public participation, and is coordinated with the land management planning processes of States, local governments, and other Federal agencies.

The NFMA was enacted to resolve long-standing issues about managing National Forest resources. The central or primary issues and concerns which are discussed in this FEIS and which the proposed regulations address are:

—The conceptual framework for the integrated planning process.

—The interdisciplinary approach to planning.

—Diversity of tree species and plant and animal communities.

—The role of economic analysis.

—The determination of lands not suited for timber production.

—Departures (limitations on timber removal).

—Size of openings created by harvest cutting.

—Public participation.

—Management of wilderness areas, and disposition of roadless areas.

—Coordination in planning between Federal, State, and local governments.

—Protection of riparian areas.

II. Alternatives Considered In This Final Environmental Impact Statement.

There is an infinite variety of ways for language to capture the intent of NFMA in process, management standards, and guidelines. Alternatives presented in this FEIS cover language to address the central issues and concerns mentioned above. Since NFMA mandates development of regulations, a "no action" alternative was not created for presentation, discussion, and evaluation in the DEIS or in this FEIS. (For a description of pre-NFMA planning policy and direction, the reader is referred to Forest Service Manual 8200.)

Neither is a public comment alternative presented in this FEIS. Though the DEIS contains such an alternative (Alternative No. 5), it was conceptual, and consequently was difficult to analyze in terms of effects. Therefore, it was decided not to create and present a similar alternative in the FEIS. Instead, the public comment received was analyzed and used to create the FEIS Preferred Alternative. A summary of this comment is presented in section VII. It is further discussed in section IV, Alternatives Considered, in terms of how the comment contributed to the Preferred Alternative.

Alternatives considered in the FEIS are: 1. Forest Service Draft Regulations as published in the Federal Register, Vol. 43, No. 170, August 31, 1978, as further explained and evaluated in a published Environmental Assessment

Report, and Supplement, dated August 24, and September 12, 1978, respectively.

2. Environmental Group's proposals for § 219.10(d), as published in the Federal Register, August 31, 1978.

3. Timber Group's proposals for § 219.10(d), as published in the Federal Register, August 31, 1978.

4. Committee of Scientists Final Report to the Secretary of Agriculture, dated February 22, 1979, and recommended regulations attached thereto.

5. Public comment on the August 31, 1978 Draft Regulations; the summary or consensus view. This Alternative was only used in the Draft Environmental Impact Statement and was not evaluated in the Final Environmental Impact Statement. In the FEIS public comments from the May 4, 1979 Draft Environmental Impact Statement were analyzed and used to help develop the Preferred Alternative, Number 8.

6. The DEIS Preferred Alternative published May 4, 1979 in the Federal Register, Vol. 44, No. 88: Regulations with provisions for nationally established standards for protection of riparian areas and harvest cut openings.

7. Regulations identical in all respects to Alternative No. 6 EXCEPT that standards for protection of riparian areas and harvest cut opening sizes will be established through the regional planning process.

8. Revised and Final Regulations, the Preferred Alternative, developed in response to comments received on the DEIS.

III. NFMA requires an integrated plan for each administrative unit of the NFS. The planning process prescribed establishes an interdependency of land management and resource planning.

It is virtually impossible to quantify the specific effects of implementing any of the alternative regulation proposals. The regulations direct the process of preparing and revising plans, and have no direct effect on the human environment, nor do they commit land or resources. The regulations establish procedures for planning future commitments.

Effects on the production of goods and services are conjectural and cannot be verified quantitatively until the planning is completed. Anticipated impacts will be identified in plans prepared pursuant to the regulations and to the NEPA process.

Some general qualified effects or impacts of the alternatives are presented in table form by issues. For example, each alternative enhances plant and animal diversity, protects soil and water values and the visual resource, and ensures long term productivity. The relative contribution toward enhancement of each alternative is illustrated in the appropriate tables. The actual results, quantitatively, will not be known until individual plans are completed.

IV. Consultation with others, including the public, was extensive and was a major factor in developing the alternatives discussed in the DEIS and the FEIS Preferred Alternative. The public was invited to comment on the first draft of the regulations which appeared in the Federal Register August 31, 1978. Two public hearings were also conducted specifically to obtain views. From the initial inception of work to develop the regulations through to the present time, the Forest Service and the Department have maintained an open door policy with the public and interest groups to obtain information as well as to explain work and progress. Eighteen Committee of Scientists meetings were opened to the public, and a total of 737 individual responses containing 5,373 distinct references to various parts of the August 31, 1978 draft regulations were received, a substantial number of which were elaborate, detailed, and explicit. Included were letters from members of Congress, Federal and State Agencies, local governments, representatives of various interest groups, as well as the general public. As a consequence it was decided to revise the first draft of the regulations (August 31, 1978) and to republish them accompanied by a Draft Environmental Impact Statement. This appeared in the Federal Register, Vol. 40, No. 88, May 4, 1979. Since then another 245 responses have been received containing 1581 distinct comments, all of which have been analyzed and considered during the preparation of this FEIS.

Appendix "A" contains a list of Federal agencies, State governments, national organizations and individuals from whom written comments were received following publication of the first draft regulations on August 31, 1978. The list also indicates by (*) those from whom written comments were received on the DEIS published May 4, 1979 in the Federal Register.

All those who commented on, or who otherwise requested copies of the August 31, 1978 draft regulations, received a copy of the DEIS as published in the Federal Register on May 4, 1979. They also received a complete copy of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976. The Committee of Scientists Report and their Recommended Regulations, and the Forest Service Perferred Alternative Regulations were also printed in the May 4, 1979 Federal Register to accompany the DEIS, and were therefore available to reviewers. Consequently this material is not printed again in this FEIS but is made part of it by reference. Copies of the DEIS and the material which accompanied it are available to anyone upon written request.

All those groups or individuals who have commented on the DEIS will be sent a copy of this FEIS.

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## I. Introduction

### *Legislative Development Background*

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA), is a comprehensive framework and primary source of direction to the Forest Service to fulfill its mandate to manage the National Forest System (NFS). The central element of the Act is the institution of land and resource managment planning as a basic means to achieve effective use and protection of renewable resources and a proper balance of the use of NFS lands.

Section 6 of the Act requires the Secretary of Agriculture to prescribe NFS land and resource management planning regulations. The standards and guidelines in these new regulations must be incorporated into NFS land and resource management plans and every effort is to be made to complete such plans by September 30, 1985.

An initial draft of the proposed regulations was published in the Federal Register, Vol. 43, No. 170, August 31, 1978 (pp. 39046–39059) for public review and comment. An Environmental Assessment Report and Supplement were also prepared dated August 24, and September 13, 1978, respectively. These draft regulations had been under preparation since the spring of 1977, when the Secretary of Agriculture

appointed a Committee of Scientists to provide advice and counsel on the development of the regulations required by Section 6 of NFMA. Publication of these first draft regulations prompted substantial comments, suggestions, and recommendations from the general public, and various resource and environmental groups. It was, therefore, decided to revise the August 31, 1978 draft regulations and to submit alternative regulations to the public in draft form to be accompanied by a Draft Environmental Impact Statement (DEIS). These draft alternatives as influenced by the subsequent public comment, are the basis for the Preferred Alternative presented in this FEIS.

The regulations (the Preferred Alternative) may be implemented no sooner than 30 days following the date the Notice of Availability of this FEIS is published in the Federal Register by the Environmental Protection Agency.

*Management of the National Forest System (NFS)*

The Forest Service administers 187 million acres of Federal land located in 44 states, Puerto Rico, and the Virgin Islands. The management of those lands also affects all or portions of about 39 million acres of intermingled State and privately owned lands. Except where special, restricted uses are prescribed by law, this Federal land is managed under the concept of multiple use (as defined by the Multiple Use-Sustained Yield Act of 1960) for a variety of products, services, and uses including wood, water, wildlife and fish, forage, wilderness, and outdoor recreation. The enduring resource of the National Forest System is its capability to meet a wide variety of public needs. Multiple-use management provides the architecture for harmoniously nurturing the balance between productive ecosystem longevity and societal desires. Careful analysis of use relationships and available opportunities within a context of equitable distribution and just compensation are required to meet the goals embodied in the Multiple Use-Sustained Yield Act of 1960. So that the various uses are harmonized to minimize conflicts and adverse impacts on the land, the relative values of the different resources are considered in determining forest and rangeland resource use patterns that will meet the needs of the American people.

*Evolution of National Forest System Planning*

During the early 1900's, most National Forest System lands were inaccessible, public demands for goods and services were low, and conflicts among resource uses were minor. Priority was given to protecting these public lands from fires, damaging insects and diseases, and unauthorized use. Resource production and use served local rather than regional or national needs. Most Forest Service planning in that era centered on specific work plans for forest land rehabilitation, protection, and reforestation.

By the late 1930's, however, there existed a general public awareness that more intensive management of the National Forests—and the utilization of their various renewable resources on a sustained-yield basis—should also serve the national interest. This prevalent philosophy, coupled with a need for vital timber during World War II, spawned a dramatic expansion of National Forest resource management and utilization in the 1940's and 1950's.

Although early laws governing the establishment and administration of the National Forests referred only to timber and water resources, the other resources—wildlife, forage, and outdoor recreation—have always been protected and managed. By 1939, the Forest Service had made clear its policy to administer the National Forests on multiple-use principles.

Following World War II, the agency completed an appraisal of the Nation's forest situation and developed the concept of composite resource planning. The various resources were inventoried, and a composite plan prepared that described types of vegetation, location of streams and other bodies of water, areas requiring special management, planned recreation areas, primary transportation routes, and other pertinent factors.

Recognizing the lack of specific statutory direction to manage all the resources of the National Forests under multiple-use principles, the Forest Service proposed a multiple-use act in the late 1950's. Passage of the Multiple Use-Sustained Yield Act of 1960 provided congressional endorsement of the Forest Service policy and practice of equal consideration of all National Forest renewable resources.

Land management planning was formalized into a distinct process upon passage of the Multiple Use-Sustained Yield Act. Until shortly after passage of the National Environmental Policy Act of 1969, this process was commonly referred to as "multiple-use planning," and the basic documents that described how the various resource uses would be coordinated were called "multiple-use plans." Separate plans were made for each National Forest Ranger District.

These multiple-use plans usually zoned National Forest System land and included specific coordinating requirements to ensure compatability of resource uses. They did not set resource development goals. Such goals were established by separate resources development plans prepared for each National Forest. The Ranger District multiple-use plans were used to coordinate the actions taken to achieve the objectives of the National Forest System resource development plans.

District Rangers were also required to prepare a special impact analysis before undertaking any significance resource development project. The analysis contained a statement on the nature and scope of the project, the expected impact the project would have on each resource, and how the project would be carried out to conform to the multiple-use plan requirements. The format of these reports was similar to that of present-day environmental impact statements.

In the early 1960's, another factor had also entered the resource picture—intensified public concern for environmental policy. Suddenly, it seemed, the Nation realized that clean air, clean water, and natural beauty were just as important to its standard of living as industrial products. Increased concern for the Nation's forest lands was part of this awakening environmental consciousness. Many Americans became aware of the National Forest System and realized that although these public lands contained substantial amounts of the Nation's remaining natural resources, there were limits to their uses.

The desire for a quality environment, however, did not lessen the need for forest products and services from the National Forests. On the contrary, while concern for the environment reached new heights, so did the demand for products and services. One result of this was the passage of the 1964 Wilderness Act. Since the 1920's, the Forest Service has identified and designated areas of high wilderness value on the National Forests. Development of these areas was precluded by direction of the Secretary of Agriculture or the Chief, Forest Service. the Wilderness Act created the National Wilderness Preservation System and provided for the designation of Federal land to be preserved in their natural state.

By the mid-1960's, the Forest Service was caught in a dilemma. On one hand, conflicting demands for forest resources were increasing rapidly; on the other hand, the renewable resource base was perceived as shrinking with the implementation of the Wilderness Act. Some critics claimed that management of the National Forest System was out of

balance, that some uses were being increased at the expense of others, and that the Forest Service was ignoring its mandate to manage the National Forest System for multiple uses. And, seemingly, the public wasn't being given a chance to formally influence the Forest Service decisionmaking process. The Forest Service land management planning process changed in three major aspects in response to these public concerns and to the National Environmental Policy Act (NEPA) of 1969.

The first change converted Ranger District multiple-use plans to land management unit plans. Unit plans are considerably more detailed. They apply to geographic areas containing similar social and physical resources and land characteristics rather than to Ranger Districts, and they are accompanied by environmental impact statements.

The second change incorporated more strict interdisciplinary analyses into the planning process. Before NEPA, multiple-use plans received multidisciplinary review. After NEPA, review was accomplished through interdisciplinary interaction.

The third change formally involved the public in forming and reviewing unit plans.

In August 1974, Congress enacted the Forest and Rangeland Renewable Resources Planning Act (RPA). Although it did not significantly change existing Forest Service land management planning procedures, it made the development and maintenance of National Forest System land and resource management unit plans statutory requirements. It re-emphasized that an interdisciplinary approach be used in the development and maintenance of land management plans. It required that periodic comprehensive programs be developed that would integrate all Forest Service activities. And it more directly involved Congress in evaluating Forest Service programs and in assigning priorities. The RPA also provided for an assessment of the Nation's renewable resources, including those of the National Forest System. This Assessment provides the basic information for resource management planning at national, regional, and local levels.

The National Forest Management Act of 1976 amended RPA to provide additional statutory direction on the preparation and revision of National Forest System land and resource management plans.

Major highlights of NFMA are land management planning, timber management actions, and public participation in Forest Service decisionmaking. Also featured are requirements for coordination with planning processes of State and local governments and other Federal agencies, and an interdisciplinary approach to plan development and maintenance. It reaches beyond the 187 million acres of the National Forest System to recognize the importance of scientific research and cooperation with State and local governments and private landowners. So, in effect, it addresses all three major areas of Forest Service operations in carrying out its national forestry leadership role—management of the National Forest System, natural resources research, and cooperative forestry assistance to State and private landowners.

A major part of the NFMA is devoted to strengthening the Forest and Rangeland Renewable Resources Planning Act (RPA). All but one of the first 12 sections are amendments to it, nearly tripling the length of the Resources Planning Act. Some of these amendments include requirements for recommendations in the RPA Program which evaluate major Forest Service program objectives; explain opportunities for all forest and rangeland owners to improve their lands; recognize the need to improve and protect soil, water and air; and state national goals relating to all renewable resources.

Land management planning direction is the core of the Act. Regulations—the Preferred Alternative presented in this FEIS—will be promulgated which prescribe the process for development and revision of land management plans. Management guidelines will deal with overall NFS land management and require that lands be identified according to their suitability for resource management.

These guidelines will relate to the RPA Program goals to ensure that economic, environmental, and ecological aspects are consistent with the Multiple-Use Sustained-Yield Act and RPA. They will provide for the diversity of tree species and plant and animal communities, and for research, management evaluation, and monitoring to prevent impairment of the land's productivity.

Each administrative unit of the National Forest System will prepare, through an interdisciplinary team approach and with the aid of public participation, an integrated, comprehensive land management plan to be revised at least every 10 years (NFMA permits revision on a 15 year cycle). The land management plan and supporting functional plans must be integrated.

The NFMA contains direction on harvest scheduling practices followed by the Forest Service. The annual allowable sale quantity (harvest) from each National Forest will generally be limited to a quantity equal to or less than a quantity which can be removed annually on a sustained-yield basis. The Act gives the flexibility to depart from this policy through land management planning, including public participation. Departures from the standard policy must be in harmony with multiple-use management objectives developed during the planning process and described in the land management plan.

Land areas not suitable for timber production will be identified in land management plans considering physical, economic and other factors. These lands are not to be harvested for 10 years except for salvage sales or sales to protect other multiple-use values.

Such lands will be reviewed every 10 years thereafter and may be returned to production if appropriate.

Silvicultural standards will insure that, generally, stands of trees shall be harvested when mature (culmination of mean annual increment of growth). However, timber stand improvement measures, salvage operations and removal of trees for multiple-use purposes are not precluded. This means that stands of trees within the National Forests in general shall be sawtimber rather than pulpwood size before harvesting. The Act also directs that diversity of plant and animal communities should be provided for and appropriate tree species diversity maintained. In brief, there should be no large-scale conversations of National Forest lands to a single-tree species.

The Act incorporates into law the substance of the so-called "Church Guidelines." These guidelines include the caution that clearcutting should only be used where it is the optimum method.

Public participation in development and revision of land and resource management planning was a prime consideration in congressional thinking. The phrases "public participation" or "public involvement" are used 11 times in the Act and are clearly indicated in other sections.

Regulations must be written to carry out the public participation aspects of the law. Not only has Congress ordered fuller public participation in the decisionmaking process, but it also made rules so the public can participate with relative ease.

A Committee of Scientists—composed of non-Forest Service personnel—was established to help develop regulations for all land management planning, including timber and other resource

plans, by providing scientific advice and counsel, and to insure that the planning process developed is interdisciplinary.

*Direction for Planning and Management*

Planning for resource allocation and the conduct of subsequent management practices require (1) the best available resource data and information, including the views of citizens and special interest groups, other Federal, State and local agencies, and (2) the synthesis and evaluation of such data and information utilizing professional and administrative judgments as to how best to meet statutory goals and objectives and achieve the interests and expectations of the public. To accommodate these requirements, all Forest Service activities are grouped into 12 program elements comprised of eight resource elements (recreation, wilderness, wildlife and fish, range, timber, water, minerals, and human and community development) and four support elements (protection, lands, soils, and facilities).

Resource program elements are defined as major Forest Service mission-oriented endeavors that fulfill statutory or executive requirements and indicate a collection of activities from the various operating programs required to accomplish the agency mission.

Support program elements are activities and costs that do not primarily benefit a single resource element. However, these elements encompass the activities that are necessary to maintain and facilitate outputs of several or all resource elements.

The mission elements that follow for each program element provide overall national direction for the activities within that element.

Land management planning is the principal device for conveying management direction to and from the national level to National Forest planning areas.

*Resource Program Elements*

1. Recreation. The primary mission of this element is to provide outdoor recreation opportunities for the Nation. This includes all activities necessary to protect, administer, and develop outdoor recreational opportunities within the National Forest System so that they meet their appropriate share of the Nation's existing and anticipated demand compatible with other resource values; protect, manage, and provide trails and other access to the scenic and cultural resources within the National Forest System; conduct research to improve the effectiveness of providing and managing outdoor recreational opportunities; and provide technical assistance and advice to non-Federal landowners for dispersed recreation.

2. Wilderness. The primary mission of this element is to secure the benefits of an enduring resource of wilderness by assuring that suitable, needed, and available National Forest System lands will be designated for preservation and protection in their natural condition. National Forest System wilderness areas are administered for the use and enjoyment of the American people so as to leave the resource unimpaired for future use and enjoyment, to preserve their wilderness character, and to provide for the gathering and disseminating of information regarding their use.

The classification and study of National Forest System areas for possible wilderness designation are included in the Lands support element, while the management of such areas is included in the Recreation resource element. Wilderness research is related to recreation research to provide knowledge to manage and protect wildernesses and unique ecological features.

3. Wildlife and Fish. The primary mission of this element is to provide productive wildlife and fish habitats, with special emphasis on threatened and endangered species. Management of wildlife and fish habitats is closely coordinated with the States, because States have prime responsibility for management of wildlife and fish populations. This coordination includes maintaining close working relations among National Forest System units and other Federal, State, and private land managers. The element includes activities necessary to protect, administer and develop National Forest System wildlife and fish habitats; assist non-Federal land managers through cooperative forestry programs; and develop new knowledge through research on the environmental requirements of wildlife and fish and attainable management alternatives under these requirements.

4. Range. The primary mission of this element is to provide for efficient ways of livestock grazing on forest and rangelands commensurate with other commodity, environmental, social, and aesthetic needs. Ecological and management information about range ecosystems is provided for non-livestock purposes, such as endangered plants and wild free-roaming horses and burros. This element includes all those activities that bear directly upon management, use, and protection of National Forest System range resources; cooperative activities for the use and improvement of non-Federal forested ranges; and research to provide a sound technical and ecological base for range management, use and protection.

5. Timber. The primary mission of this element is to enhance the growth, utilization, and utility of wood and wood products to help meet the Nation's short- and long-term needs. It includes management activities in the National Forest System and on non-Federal lands, as well as research activities that contribute to the improvement, growth, and timely and efficient harvests of timber from forest land, consistent with other resource values; the efficient processing and utilization of wood and wood-related products; and the development of better management methods.

6. Water. The primary mission of this element is to protect, conserve, and enhance water resources within the National Forest System consistent with other resource values. This element also includes watershed and river basin planning and development, in cooperation with States and other agencies, designed to increase knowledge about the water resource. Included are research and cooperative activities to meet water quality and quantity standards onsite and offsite to reduce pollution and to improve water resource features.

7. Minerals. The primary mission of this element is to integrate the exploration and development of mineral resources within the National Forest System with the use and protection of other resource values. Research and cooperative activities related to the reclamation of mined lands are also included.

8. Human and Community Development. The primary mission of this element is to help people and communities to help themselves. The element includes activities that provide: Youth development through resource conservation work and learning experiences; adult employment and training opportunities through various Federal human resource programs; rural community planning development information and services; and technical forestry assistance and research for urban areas in the establishment, management, and protection of open space and the use of trees and woody shrubs.

*Support Program Elements*

1. Protection. The primary mission of this element is to protect and maintain forest and rangelands. It includes insect and disease control, fire protection, law enforcement, development of knowledge through research, and the technical assistance needed for National Forest

System and other public and private forest and rangelands.

2. Lands. The primary mission of this element is to assist in land management planning and provide special land-use administration, landownership adjustment, multiresource studies, and new knowledge through research which primarily benefits multiple resource element outputs. These activities cover technical assistance and cooperation on non-Federal lands as well as within the National Forest System.

3. Soils. The primary mission of this element is to protect, conserve, and enhance the soil productivity of forest and rangelands. It includes the development of new knowledge through research, surveys, protection, rehabilitation, and improvement activities directed toward non-Federal lands as well as within the National Forest System.

4. Facilities. The primary mission of this element is to provide and maintain capital improvements such as buildings, roads, fences, bridges, dams, and airfields.

*Central Issues and Concerns Addressed by Alternative Regulations*

The NFMA was enacted to resolve long-standing issues concerning the management of National Forest resources. It clarified rules about the use of silvicultural practices and required that certain land and resource management planning practices be developed and used. The alternative regulations described in the DEIS and this FEIS respond to the NFMA by prescribing a planning process and technical standards and guidelines to govern planning and management activities. The central or primary issues and concerns which the alternative regulations attempt to address are described below. These issues are further discussed in two ways: First in section IV in terms of how the various alternative regulations address the issues; and second, in section V in terms of relative effects (on issues) of the alternatives on certain factors.

1. The Conceptual Framework for The Integrated Planning Process. There are many major proven conceptual models for planning-decisionmaking policy formulation. Which model or combination is best suited to congressional direction that the Forest Service define a unified planning process with supporting guidelines and standards to implement on each administrative unit of the National Forest System? Should emphasis be on process or on prescription? To what extent and detail should the relationships among and between planning levels and resource management functions be defined? Does planning proceed from the top down, from the bottom up, or through iterative, negotiated cycles between levels?

2. The Interdisciplinary Approach to Planning. The primary concerns are the purpose of the interdisciplinary team, who can be members, what disciplines should be represented, what should be the professional and technical qualifications of teams members, and the responsibilities of team leaders?

3. Diversity of Tree Species and Plant and Animal Communities. Congressional intent concerning "diversity" seems clear: it will be considered in planning, and it is to be provided and maintained by management. The basic issue is whether the regulations should be very specific or provide discretionary authority in providing diversity through management practices and activities. Of further concern is whether to prescribe by regulation how to measure diversity, and should existing diversity be maintained and reduced only to achieve necessary multiple-use objectives.

4. The Role of Economic Analysis. NFMA requires economic analysis of management program alternatives to determine economic consequences, and that economic analysis will be undertaken at all appropriate places throughout the planning process. At issue is the nature of economic tests which might be made, and whether Congress intended that benefits must exceed costs for each and every proposed management practice.

5. Determination of Lands Not Suited for Timber Production. A primary issue is the role that economics should exert in determining lands not suited for timber production. Some critics argue that NFMA prohibits management practices where costs exceed benefits and that, as a consequence, timber harvesting may not occur where benefits are less than costs. Another interpretation is that a strict economic test is not required, but rather that economics be one of several criteria used to determine suitability for harvest.

6. Departures (Limitations on Timber Removal). The National Forest Management Act limits the sale of timber from each National Forest to a quantity which can be removed annually in perpetuity on a sustained-yield basis with discretion to depart from this policy in order to meet overall multiple-use objectives. This provision to depart is not in Section 6, but in Section 11 (or Section 13 of the amended RPA). This separation has raised the issue of whether the determination of the timber allowable sale quantity and departures should be handled outside of the forest planning process or as a separate and distinct step after the forest plan has been completed. Another concern is the question of what conditions should trigger the formulation of a departure alternative, as well as how the approval process for such an alternative might be determined.

7. Size of Openings Created by Harvest Cutting. Controversy over timber harvest methods on National Forest lands sparked the NFMA legislation. Congress debated whether to mandate strict nondiscretionary prescriptions for the management of National Forest lands and resources, or to require development of regulations to guide a planning process which would incorporate certain technical standards and guidelines to govern management activities. The latter course was taken, but the issue of prescription vs. planning process continued during development of the proposed regulations. The crucial issue is how specific should be the standards and guidelines for planning and managing each of the resources. For example, should the regulations prescribe the maximum size of openings created by harvest cuts, or instead should they describe the process by which the size of such openings would be determined on the basis of more site specific information.

8. Public Participation. The minimal elements of adequate public involvement are mentioned in the NFMA: The public must be adequately informed throughout the planning process; plans must be available in convient locations; documents forming a plan must be integrated and located together to facilitate public review; and procedures for public participation must be identified in regulations covering the planning process.

The issues are the adequacy provided within the regulations for allowing the public to influence the decision process. In the past, this has included the use of the administrative review process to alter the decisions. There is substantial doubt as to whether the appeal process, as previously applied, is permitted under NFMA. Should the scope and level of public involvement be described in regulations or be discretionary? Should regulations define the agency as an active participant in representative democracy? In the past this role has been reserved for elected officials. Should public participation be required in certain steps of the planning process?

9. Management of Wilderness Areas and Disposition of Roadless Areas. NFMA provides little guidance about wilderness resource planning. Issues to resolve through the proposed regulations

are the need to identify and appraise additional candidate areas and whether to establish maximum allowable levels of use.

10. Coordination in Land Use Planning between Federal, State and Local Governments. Planning by different entities that does not consider mutual goals and policies can frustrate National Forest management. The issues are the need to be aware of, evaluate, and consider the plans and policies of other planning bodies, and to involve appropriate representatives from them in National Forest planning activities.

11. Protection of Riparian Areas. At issue is the question of whether regulations should prescriptively designate a uniform protective strip around water bodies or provide criteria for protection that allows for local management variability.

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## II. The Affected Environment

The affected environment is the entire National Forest System, approximately 187 million acres of Federal land administered by the Forest Service, and about 39 million acres of intermingled State and privately owned lands. The formal System consists of 154 National Forests totalling 183.4 million acres, 19 National Grasslands with 3.8 million acres, and about 0.5 million acres of smaller purchase units, land utilization projects, and research areas. Initial reservation of public domain land contributed 160 million acres to the System with the remaining 28 million acres acquired by purchase, exhange, transfer, or other forms of acquisition.

The majority of land, 163.8 million acres, is located in the western portion of the United States, including Alaska. Approximately 23.9 million acres are located in the East. Although the land base is not evenly distributed throughout the country, National Forests and Grasslands provide an opportunity for all people to enjoy the many goods and services they offer. Lands within the NFS span a broad range of land forms and environment. For a discussion of land surface divisions, the reader is referred to work by Edwin H. Hammond.[1]

Vegetation. The vegetation of the National Forest System is as diverse as the plains, valleys, and mountains on which it grows.

For a thorough discussion about the relationship of vegetation to various generalized ecosystems in this Nation, the reader is referred to work by Robert G. Bailey.[2] Potential natural vegetation of the United States was mapped by A. W. Kuchler in 1966.[3] This mapping represents vegetation that would occur naturally in a given area if succession were not interrupted.

[1] Hammond, Edwin H. 1964. Analysis of Properties in Land Form Geography: An application to Broad Scale Land Form Mapping. Annals of the Association of American Geographers. Volume 54:11–23.

[2] Bailey, Robert G. 1976. Ecoregions to the United States. U.S. Department of Agriculture. Forest Service. Map and Discussion.

[3] Kuchler, A. W. 1966. Potential Natural Vegetation Map. U.S. Department of Interior. Geological Survey. Map and Discussion.

Air. The Nation's air quality is mandated by the Clean Air Act (Pub. L. 88–206) and its amendments. The 1977 amendments (Pub. L. 95–95) specified, among other things, certain Federal areas, such as national parks, wilderness, national monuments, national seashores, and other areas of special national or regional values, be designated for air quality protection.

The amendment adopted a system by which the entire nation would be designated specific air quality classes. Three categories were established—Class I, Class II, and Class III. Presently, each class represents a defined, allowable increase in particulate matter and sulfur dioxide. Class I allows the smallest pollution increment.

Clean Air Act Amendments initially classfied all lands. Mandatory Class I status was given to international parks, national wilderness areas over 5,000 acres in size, national memorial parks that exceed 5,000 acres, and national parks that exceed 6,000 acres and were in existence on the date of enactment of the 1977 Clean Air Act Amendments. All other areas (except those redesignated Class I by regulation prior to August 7, 1977), were designated Class II.

Section 164 of the Act gives State and federally recognized Indian Tribes authority to redesignate classifications for areas within their geographic boundaries. This authority was constrained to the extent that mandatory Class I areas could not be redesignated and certain other areas may be redesignated only as Class I or II.

Environmental Amenities. Perception of our environment is primarily a visual experience, but our senses of smell, taste, touch, and hearing contribute to complete our perception of environmental amenities. Mainenance of air quality provides environments pleasant to our senses of smell and enhances opportunities to enjoy expanded views and vistas.

The landscape character of this Nation can be described in terms of land and rock forms (topography), waterbodies, and vegetative patterns. These are components of the visual resource that, when seen in varying combinations, can be used to evaluate the visual quality of an area. Maintenance and protection of the visual resource is an important factor for the millions of people who view National Forests, and management of this resource is an important part of total land and resource management within the National Forest System.

Noise, or more precisely the lack of it, is an amenity savored by the American public. Complete solitude may usually

be obtained within wilderness and more remote roadless areas. A quiet, relaxed environment can be found throughout most National Forests and Grasslands. But other users often prefer noise and bustle. The management challenge for the National Forest System is to provide a cross-section of environments the many publics wish to use.

Resource Use. Management of the lands and renewable surface resources of the National Forest System emphasizes the continuous production of multiple-use benefits for the American people. In contrast, management emphasis for lands administered by the National Park Service is preservation of areas of natural, historical, recreational, or scenic attractions. The National Wildlife Refuges are managed to protect various wildlife species.

For a more complete description of the resource uses made of and planned for on the National Forest System, the reader is urged to review the Draft Environmental Impact Statement for the 1980 Update of the Forest Service RPA Program. This document, released for public review on March 27, 1979, is available from Forest Service Regional Offices and headquarters in Washington, D.C.

Cultural Resource. Development of this Nation can be traced through many remaining archeological and historical sites, an invaluable asset for study of what has preceded us. However, the cultural resource on National Forests and Grasslands is neither fully discovered nor totally understood. Historical sites are being discovered as we continue to know more of this land. Though the resource has not been completely inventoried, it is protected by law and is recognized as an integral part of the total Forest Service land and resource management program.

Socio-economic Environment. This is related to population and demand for goods and services. Our 220 million residents rely upon the wealth of natural resources this country can provide for food, shelter, and employment. In addition, many seek escape from normal activities that surround them and find relief in natural attractions that abound in mountains, lakes, and valleys of this diverse land. The National Forest System provides both physical needs essential for comfort and diversified environments that promote quality of life.

Direct cash receipts from the National Forest System in fiscal year 1977 totaled a little more than $691.5 million. Timber receipts were by far the largest source, with receipts from mineral leases and royalties second. Fees from grazing and other permits were third. Twenty-five percent of the receipts received were returned to counties and States where the revenue originated for the purpose of funding schools and developing secondary roads. Additional receipts in the form of deposits and value added bring the total to more than $1 billion.

Total dollar receipts are not a large factor when compared to the Nation's income, but they do represent much more then returns to the U.S. Treasury. The direct benefit created by the sale and use of National Forest and Grassland resources accounts for more than 180,000 person-years of employment. Indirect benefits from supporting industries add additional employment and dollar incomes to this total. Investments in transportation systems, cooperative assistance, and other non-qualifiable factors are also positive benefits derived from the National Forest System.

For many, the National Forest System is a special place remembered because of a recreational experience. It has symbolic meaning for those living within its shadows or concern for management of this Federal land, whether they depend upon it, have intimate knowledge of it, or only recognize it as "being there".

Land use decisions can affect every individual. Those with an economic or specialized recreation interest can be affected if areas are identified for wilderness use. Others with more of a preservation orientation may be disturbed if a favorite roadless area becomes available for use of its commodity resources, and roads are built into the area. Various uses of land are complex in nature and at times conflicting. What is ideal for one group of individuals may adversely affect others. Within this framework, the process for planning and managing the National Forest System must occur.

## III. Evaluation Criteria

Criteria for evaluating alternative regulations are based primarily on the specific guidelines and standards identified in the National Forest Management Act. The options for developing the regulations are limited to some extent by legal requirements and the intent of the law. This not only narrows the range of available alternatives but also reduces the degree of evaluation required in proposing the regulations. The following evaluation criteria will be applied:

1. NFMA Requirements. Alternatives will be evaluated on the basis of how well they achieve the specific requirements of the National Forest Management Act. In some instances it may be necessary to interpret the "intent" of the Act in order to make this evaluation.

2. Scientific and Technical Adequacy. A number of issues contained in the proposed regulations relate to scientific and highly technical aspects of natural resource management. While there may be general agreement among the scientific community on most of these issues, some disagreement does exist and much political controversy has surrounded some of the technical aspects of management. The scientific and technical aspects of various alternatives must be separated from the political controversies which surround them, and evaluated solely on the basis of generally accepted scientific knowledge.

3. Acceptability to Diverse Publics. General acceptance of the regulations is essential if the planning process is to be responsive to the specific concerns identified during the legislative history of the Act. Alternatives will be evaluated on the basis of input from public participation. Acceptability will continue to be evaluated as the preferred alternative regulations are promulgated and put to use. Public feedback will be influential in the development and use of supplementary material essential to carrying out the planning process.

4. Achievement of RPA Program Goals. The NFMA provides for a planning process as part of the RPA Program development process, and requires standards and guidelines to govern management activities. These management activities in turn affect commodity and amenity production goals and targets (outputs) established in the RPA Program. In addition to identifying outputs, the Program must also specify the results anticipated and the benefits associated with investments, and compare the inputs and anticipated costs with the total related benefits, direct and indirect returns. The costs and benefits of producing commodities is considered within a framework of environmental protection: Program provisions must also protect and where appropriate, improve the quality of soil, water, and air resources.

Alternatives will be evaluated recognizing these dual goals—commodity production and environmental protection. For environmental protection, alternatives will be judged on the extent to which they provide safeguards against resource damage or abuse. This reflects how the alternatives provide for or improve the non-commodity or amenity values. For commodities, the

alternatives will be judged on the basis of their tendency to maintain or increase supply goals (targets) consistent with the evolving RPA Program, using timber as the commodity affected.

5. Compliance with Executive Order No. 12044. Alternatives will be evaulated against direction that regulations be as simple and clear as possible; that regulations shall achieve legislative goals effectively and efficiently; that regulations shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

6. Accountability. Evaluation will be made as to how visible accountability is made through regulation in terms of who is responsible for actions and decisions.

7. Capability to Implement. Forest Service programs and personnel requirements are subject to constraints set by Congress and the Executive branch. Alternatives will be evaluated in light of personnel and skill requirements, and time required to undertake and complete planning actions specified.

8. Flexibility. In the application of resource management standards and guidelines, it must be recognized that local resource conditions vary considerably, thus necessitating special requirements or exceptions. Alternatives will be evaluated on the basis of the extent to which they permit local management discretion. Procedural standards necessary to address special needs and exceptions must be judged on the basis of their ability to maintain quality, conformity, and adequate review of management actions while not burdening the entire management systems with trivial details.

## IV. Alternatives Considered

Many requirements in the alternative regulations cannot be understood without reading several sections to ascertain the relationships between requirements in one and those of another. Therefore, the reader is urged to read and study the regulations in their entirety.

The purpose of this section is to describe the substantive alternatives which have been considered during the process of developing both the draft and the proposed final regulations for land management planning for the NFS. This section concludes with a description of the Preferred Alternative for this FEIS, Alternative No. 8.

*Organization of this Section.* The organization of this section is similar to that of the DEIS (Federal Register, May 4, 1979); however, some changes have been made in the presentation of material for the purposes of clarity and reader understanding. Alternative No. 5 in the DEIS dealt with public comments on the original draft regulations which appeared in the Federal Register on August 31, 1978. These public comments were used in the evaluation and revision of the original draft regulations and are reflected in Alternative 6 (the preferred alternative) of the DEIS. Following publication and distribution of the DEIS, the Department received 1581 additional specific comments which dealt with the DEIS preferred alternative (Alternative 6). Since Alternative 5 dealt with comments received on the original draft regulation only. This information is available in the May 4, 1979, DEIS and, therefore, is not repeated in this FEIS.

This section is now organized as follows:

A summary description of alternatives is provided for each of the alternatives (with the exception of Alternative 5) identified in the DEIS. These alternatives include the Planning Process Framework, Alternative 1, Alternative 2, Alternative 3, Alternative 4, Alternative 6 (DEIS preferred alternative), and Alternative 7.

A description of Alternatives 1,2,3,4,6, and 7 relative to the issues identified in Section I of this document.

A table which identifies the substantive changes which the Department now proposes to make to Alternative 6 of the DEIS as a result of internal review and public review and comment. This table shows the location of changes and the reason and nature for changes to Alternative 6. These changes constitute Alternative 8, the preferred alternative of this FEIS.

A summary description of Alternative 8 (the preferred alternative of this FEIS).

A description of Alternative 8 as it relates to the 11 issues identified in Section I of this document.

### *Summary Description of DEIS Alternatives*

A variety of approaches could be used to develop regulations in response to Section 6 of the NFMA. Variations within the actual planning process, the definitions of specific terms, and establishment of various standards could be developed in numerous ways.

There are at least two sets of alternatives to develop and consider. One set concerns planning precess. The other concerns regulatory language, style, and structure in terms of describing the rules which are to be applied through the planning process to management of National Forest System lands and resources.

*The Planning Process Framework:* The Forest Service has been involved since its creation in the development of a land management process (see Section I). This process for allocating resources, determining outputs, and measuring impacts and tradeoffs has evolved from practical experience and application mostly at the forest level. Intense public interest in management of the National Forests has produced modifications in the evolving planning process. This public interest culminated in passage of the NFMA which requires the Forest Service to define, through rulemaking, a unified planning process with supporting guidelines and standards to be implemented on every administrative unit of the National Forest System. NFMA thus created the need to evaluate current planning and decisionmaking in detail. It set the stage for developing the function and content of land management plans. If the present planning system is to be improved, as NFMA strongly implies, then knowledge is needed about general planning theory. This would provide a conceptual basis for developing operational planning process alternatives.

The advantages and limitations of various planning process concepts and approach possibilities are described in material appended to and made part of the minutes of the May 24–26, 1977 Committee of Scientists Meeting. A brief description of planning concepts and approaches appears in Appendix "B" of this FEIS.

The alternative regulations presented in this FEIS are a composite structure of mixed scanning and the systems theory, and the mutual causal approach. This selection best provides for the interdisciplinary approach to integrated planning mandated by NFMA.

### *Alternatives for Regulation Language to Address Central Issues*

NFMA mandates development of regulations to set forth a process for the development, maintenance, and revision of National Forest System land and resource management plans. The regulations are also to contain standards and guidelines to govern the conduct of management activities. As a consequence of this mandate, a "no action" alternative was not created for presentation, discussion, and evaluation in the DEIS or this FEIS. The only realistic "no action" alternative might have been planning as currently practiced according to direction in Forest Service Manual 8200. The continuation of this direction is clearly not what Congress intended by enacting NFMA.

There are an infinite variety of ways for language to capture the intent of NFMA in management guidelines and

standards. The language is presented in a reasonable range of alternatives to address the central issues and concerns presented in Section I.

The various alternative language sets proposed are described below and are arranged by source (see the Summary, Part II) in the order corresponding to the eleven central issues identified in Section I. However, in the interest of brevity, and to facilitate analysis, some of the language presented is in summary form. All of the original material, including public comments, is available for review in its original form at Forest Service Headquarters, in Room 4021 South Agriculture Building, Washington, D.C.

This information includes the following: (1) Draft Regulations, August 31, 1979 as published in the Federal Register, Vol. 44, No. 170, including language proposals by Environmental and Timber groups.

(2) Committee of Scientists Report of February 22, 1979 to the Secretary, and suggested regulations, published in the Federal Register, Vol. 44, No. 88, May 4, 1979.

(3) Forest Service Revised Draft Regulations, the Preferred Alternative (No. 6) of the DEIS, published in the Federal Register, Vol. 44, No. 88, May 4, 1979, as part of the DEIS.

(4) Public comment on item number one (1) above.

(5) Public comment on item number three (3) above.

Items (1), (2), and (3) above have already been published with the DEIS and made available to the public. Consequently, they are not printed again in this FEIS. Instead they are incorporated herein by reference. Copies will be made available upon receipt of written request.

A summary description of the DEIS alternatives 1, 2, 3, 4, 6, and 7 is provided below. Each alternative is briefly described or characterized as follows:

*Alternative 1—Forest Service Draft Regulations* (Federal Register August 31, 1978). The original draft regulations are largely procedural in nature. The process which is to be followed in making land management decisions is outlined with greatest emphasis upon planning at the forest level. National, regional, and forest levels of planning are implied; however, the draft contains very little detail for regional planning. For the most part, the resource standards and guidelines which appear in the draft can be characterized as broad statements of concerns which must be addressed throughout the planning process. For several issues, the draft language is merely a restatement of the NFMA requirements. The management standards for determining lands not suitable for timber production are among the most detailed of all the standards presented. The draft requires both biological growth minimums and economic efficiency considerations. The biological growth minimums are not specified nationally, but are required to be stated in the regional plans. Protection standards for streams and lakes are not specified, but are required to be stated in the forest plans. Standards for selection of silvicultural systems and for size limits for openings created by cutting are to be determined by the regional planning process. The administrative appeals process would remain unchanged from the present situation. Departures would be handled at the forest planning level. Throughout the draft, the primary emphasis is upon procedures to be followed and concerns to be addressed, all within a framework which would permit a great deal of local (forest level) management discretion. It is functional in its approach to formulating standards and guidelines, and not specific that the determinations of localized standards and guidelines is part of, and as a consequence a result of the planning process.

*Alternative 2—Environmental Groups' Proposals for ™219.10(d)* (Federal Register August 31, 1978). This alternative addresses only two issues; the determination of lands not suitable for timber production, and procedures for allowing departures from nondeclining yield. This proposal specifies a national minimum biological growth potential for timber production. Under the requirements of this alternative, no timber harvesting would occur for at least 10 years on National Forest System lands on which the biological growth potential is below 50 cubic feet per acre per year growth of industrial wood in natural stands. There are several other factors to be used in the determination, including size and location of isolated tracts, nonmarketable species, slope and soil stability. In addition to these constraints, an economic efficiency test is required for the determination. Lands are not to be harvested for at least 10 years if direct benefits from growing and harvesting timber are less than the anticipated direct costs to the government, including interest on capital investments. Direct costs and direct benefits are defined. This alternative stipulates that departures may be considered only after the forest plan has been approved. In other words, departure determinations would not be permitted as part of the Forest land and resource management planning process. All proposed departures are submitted to the Chief, Forest Service, via the Regional Forester. If approved, the Chief would then direct the forest supervisor to prepare the proposals and a draft and final EIS. Final approval for all departures rests with the Secretary.

*Alternative 3—Timber Groups' Proposals for Section 219.10(d)* (Federal Register August 31, 1978). This alternative addresses two issues: determination of lands not suitable for timber production, and departures from nondeclining yield. This proposal emphasizes the role of timber production targets assigned to the forests through the RPA Program. Consequently, suitability determination (as opposed to nonsuitability) is stressed and is recognized as being largely dependent upon the ability of the forests to meet the assigned targets. A minimum biological growth potential is to be specified by the regional plan, and economic analysis is required to determine if lands are efficient for producing timber. Lands would not be used for timber production if those lands were not needed to meet the assigned targets and they were not efficient for producing timber. Departures would be considered and formulated if no timber harvest alternatives could achieve the assigned goals, or if implementation of the alternatives would result in local economic instability or inadequately maintain local or national supply needs. Departures would not require approval above the forest planning level.

*Alternative 4—Committee of Scientists Final Report to the Secretary (February 9, 1979), and Recommended Regulations attached thereto.* The Committee of Scientists reviewed the original draft regulations and recommended alternative language and, in some instances, completely new material for inclusion in the regulations. Generally, the Committee's proposals expand and add specific detail to the original draft (August 31, 1978) regulations. A number of organizational changes for regulation material are also suggested. The Committee's revisions include the addition of considerably more detail to the relationship among planning levels (national, regional, and forest), specifications for the interdisciplinary planning approach, rationale and requirements for public participation, more substantial requirements for coordination, and more specific requirements for resource standards and guidelines, including wilderness management, riparian zones, fish and wildlife, and diversity. The administrative appeals procedure would

remain unchanged from the present. The Committee has proposed a new and detailed treatment of regional planning similar to forest planning. The Committee's recommendations for lands not suited for timber and for departure, similar to those of the August 31, 1978 draft, are more specific and clear. An added requirement for departures specifies that each must be approved by the Chief, Forest Service. Although the Committee recommends a 30-meter protection strip for riparian areas it agrees with the August 31, 1978 draft that the maximum size for openings created by timber cutting be set by regional plans or regional silvicultural guides, and not be set as a national standard.

*Alternative 5—Public Comment on the August 31, 1978 Draft Regulations.* Though the DEIS contained this Alternative (No. 5) it was conceptual and did not lend itself to comparative analysis as did the other alternatives. Consequently, it was decided not to include a similar alternative in the FEIS. Instead, public comment on the DEIS was analyzed and used to modify the DEIS Preferred Alternative. This has become the FEIS Preferred Alternative. It is further described in this Section as Alternative 8, and again in Section VI.

*Alternative 6—The Preferred Alternative Identified in the DEIS.* These revised draft regulations contain provisions for nationally established standards for protection of riparian areas and for the size of harvest cut openings. This alternative is the end result of public involvement and work by the Committee of Scientists with the Forest Service in the process of developing the regulations required by NFMA. A number of organizational changes, the incorporation of new material, and more specific direction have considerably changed the alternative compared to the original draft of August 31, 1978. Most of the Committee of Scientists recommendations are reflected in this alternative. It is important to point out here that these recommendations were also strongly influenced by interactions of interest groups with the Committee. Key substantive coverage by this alternative includes the following: More detail concerning the relationships among planning levels; detailed provisions for the conduct of regional planning; more thorough treatment and clarity of purpose concerning public participation and coordination activities; more specific concerning determinations of lands not suited for timber production with the direction that biological growth potential minimums be set in regional plans, and lands be ranked for their economic efficiency for producing timber; requirements that departures from non-declining yield be analyzed through the NEPA environmental assessment process and be approved by the Chief; setting of maximum size of harvest cut openings (40-, 60-, or 100-acre maximums depending on geographic location) with exceptions provided for through regional plans where larger openings will produce more desirable combinations of benefits; and special protection of streams and lakes by requiring special attention to strips 100 feet along both sides of perennial streams, lakes and other bodies of water. The administrative appeal procedure is modified as a result of this alternative. Organizational changes include addition of material concerning regional planning, and separation of planning process criteria from resource management standards and guidelines. The planning process has been clarified and expanded explicitly to cover national and regional, as well as forest level planning.

*Alternative 7—Revised Draft Regulations.* These regulations are identical in all respects to Alternative No. 6 except that riparian protection areas and harvest cut opening sizes will be established through the regional planning process.

*Alternatives by Issues*

Regulatory language sets follow for the eleven selected issues discussed in Section I. Since Alternatives 6 and 7 are identical except for issues 7 and 11, Alternative No. 7 is discussed only for these two issues. Alternative 2 and 3 address only issue 5 and 6 and are shown for these issues only. For a discussion of Alternative 5, The reader should refer to the DEIS.

*Issue No. 1*—Conceptual Framework for an Integrated Planning Process. Alternative 1: The August 31, 1978 draft regulations are a mix of approaches with emphasis given to a "process" oriented approach. Three levels of planning (forest, regional, and national) are described in terms of information flows. However, the planning process is described only in terms of forest level planning and is not related to the other two levels.

Alternative 4: The Committee of Scientists endorses the "process" approach as opposed to a "prescriptive approach." It is recommended that the important interactive nature of the three levels of planning be conveyed in the regulations, and that the regulations also specify procedures for developing the regional plan and its content similar to requirments specified for forest plans.

Alternative 6: The recommendations of the Committee of Scientists have been adopted in the preferred alternative. In addition, a great deal more detail has been added to planning criteria and requirements throughout the entire planning process. Although the revised regulations contain many more "prescriptive" requirements than the earlier draft, the revised version is more "process" oriented than the original draft. A completely new section devoted entirely to a description of the "planning process" has been added. There is also an expanded, much more detailed treatment of the role and function of national, regional, and forest level planning. The interrelationships among the planning levels have been outlined. There are two new separate sections devoted to regional planning. One describes in detail the regional planning procedure and the other establishes criteria for regional planning actions. The requirements for forest planning have been expanded and are detailed in the same manner as those for regional planning. Provisions are made through regional planning to provide a range of objectives which forest plans must address though the planning process.

*Issue No. 2*—The Interdisciplinary Approach to Planning. Alternative 1: The August 31, 1978 draft states that an interdisciplinary approach shall be followed. With the exception of a requirement for two or more specialities to be represented, no specific requirements for team make-up or qualifications are given. Complete discretion is given to the forest supervisor for deciding both composition and qualifications.

Alternative 4: The Committee recommends more specific language on description of interdisciplinary process, actual philosophy that is to guide the team; and requirements for composition of team and for qualifications of members.

Alternative 6: Most of the Committee of Scientists' proposed language has been adopted in the revised version. The role and responsibilities of the team have been more clearly specified. The revision includes requirements for composition of the team and for qualifications for team members.

*Issue No. 3*—Diversity. Alternative 1: The August 31, 1978 draft requires that inventory information include quantitative data for determining species and community diversity. The forest planning section also specifies that each management alternative include provisions for diversity and that effects of each alternative on diversity

be estimated. There is also a specific requirement to estimate diversity effects for fish and wildlife. Methods or measures of diversity are unspecified.

Alternative 4: The Committee generally supports treatment of diversity in the regulations. Recommendations for clarifying and strengthening the language in a number of places are included. The Committee recommends against requiring the use of quantitative diversity indices. In addition, the Committee adds to the regulations specific language to ensure that planned type conversions must be justified by detailed analysis showing biological, economic, and social consequences.

Alternative 6: The Committee of Scientists' recommendations for clarifying language and establishing criteria have been adopted for this alternative. Management standards and guidelines for diversity have been expanded with more emphasis on type conversions. Additional requirements have been specified to ensure coordination with other Federal, State, and local agencies. Specific requirements for designation and management of special interest areas and research natural areas have been added.

*Issue No. 4*—The Role of Economic Analysis. Alternative 1: The August 31, 1978 draft regulations suggest that population and employment data be collected, that demand projections be used, and required that expected benefits be included in this analysis. Specific requirements for analysis include effects on distribution of goods, services and uses, changes in payments to local governments, income, employment, and economic efficiency. Direct and indirect benefits and costs are to be estimated using standards and practices to be established later by the Chief, Forest Service. Economic impact estimates of different range management alternatives on local livestock industry are also required. It is required that lands be classified as not suitable for timber produciton if "an economic analysis reveals that the lands are not efficient for producing timber."

Alternative 2: The overall issue of economic analysis is not addressed. Economic efficiency analysis for the classification of lands suitable for timber would be provided for in this alternative as part of the regulations recommended under Issue No. 5. (See Issue No. 5, Alternative No. 2)

Alternative 3: The proposal does not address the general issue of economic analysis. Some economic evaluation requirements are included in "suitable lands" requirements. (See Issue No. 5, Alternative No. 3)

Alternative 4: The Committee concludes that language in the draft regulations dealing with economic analysis is often vague and must be improved if direction is to be clear. The Committee has proposed more specific direction for ensuring that competent economic analysis occurs in all appropriate places in the planning process and are displayed for consideration of the economic consequences of alternatives.

Alternative 6: Substantial requirements relating to economic efficiency analysis, evaluation criteria, and guiding principles for management have been added in this alternative. Additional analysis requirements have been specified for regional and forest planning including supply and demand assessments and economic impact evaluation for alternatives considered. The role of economic analysis in the determination of lands not suitable for timber production and consideration of community stability objectives have been clarified. Requirements have been specified for economic evaluation of values foregone by wilderness designation.

*Issue No. 5*—Determination of Lands Not Suited for Timber Production. Alternative 1: The August 31, 1978 draft regulations outline a process for determining lands not suited.

1. Lands are considered "not capable" if biological growth potential is below a minimum set by the regional plan.

2. Lands are "not available" if they have already been designated for some other use.

3. Lands are "not suited" if timber production would result in adverse impacts upon soils, productivity, watershed, threatened or endangered species, or cannot be restocked in 5 years.

4. Lands that have been classified as "capable, available, and suitable" are to be further reviewed during the formulation of alternatives stage of planning and are classed as "not available" if management objectives for the area preclude timber production or limit production to the point where silvicultural standards cannot be met.

5. Lands that are classed as "capable, available, and suitable" may be classified as "not suited" if an economic analysis reveals that these lands are not efficient for producing timber.

6. No timber harvesting can occur for at least 10 years on lands "not suitable."

Alternative 2: This alternative includes the following limits for identifying timber producing lands:

1. Lands are "not capable" if biological growth potential is below 50 cubic feet per acre per year of industrial wood in natural stands (higher standard may be established by regional plan).

2. "Not available" if lands are administratively or legislatively withdrawn.

3. Lands are "not suited" if: A. They consist of isolated tracts of commercial forest land (stringers) such that organizing and scheduling periodic harvest is impractical;

B. They contain non-marketable timber species;

C. Slope is equal to or greater than the angle of repose of the soil, or the critical angle for slope stability;

D. Lands have soil types for which erosion rates during the first 10 years following logging would cause loss of soil greater than the amount that would be generated naturally through periodic weathering during one period of rotation; or

E. No technology has been developed or is expected to be developed in the next 10 years, that is or will be available and feasible for use in the forest during such period, that will enable timber production from the land without significant or long-lasting resource damage to soil, productivity, or watershed conditions; without significant adverse impact on threatened or endangered species; and with assurance that such lands can be adequately restocked within 5 years after final harvest.

4. Lands classified as "capable, available, and suited" for timber production are further identified as:

A. "Not available" for timber production if those lands will be managed to meet objectives of the forest plan that either preclude timber production or limit timber production to the point where silvicultural systems and resources could not be employed within the standards and guidelines for silvicultural systems and resource protection contained in these regulations and in the forest plan;

B. "Not suited" for timber production if the anticipated direct benefits from growing and harvesting timber are less than the anticipated direct costs to the government, including interest on capital investments required by timber production activities. Specific standards and practices for making the economic analysis required by this section are to be established by the Chief, Forest Service in regulations which shall be effective on the same date as these regulations, and shall be applied uniformly and nationally, provided that in determining net benefits from timber production the following principles shall be followed:

(1) Direct benefits include the anticipated revenue from harvesting

timber crops, and any benefits that can be reasonably attributed to increased production of other services such as forage, water flows, and wildlife;

(2) Direct costs include the anticipated investments, maintenance, and operating management and planning costs attributable to timber production activities, and any costs that can be reasonably attributed to decreased production of other services and to mitigation measures necessitated by the impacts of timber production. In the case of roads, only the additional investments in the road system required by timber growth and harvesting activities are to be included in direct costs; and

(3) The rate of interest used to discount future benefits and costs shall be equal to the rate expected for alternative uses of Federal funds, as set by the Office of Management and Budget.

5. No timber harvesting shall occur on lands classified as "not capable" or "not available," for timber harvesting and for 10 years on lands "not suited," excluding salvage sales and other special circumstances.

Alternative 3: The alternative makes a key factor upon which suitability determinations will be made on the production goals assigned to the forest through the regional plan from the RPA Program. The proposal requires that timber producing lands be identified in the following manner:

1. "Not capable" if biological growth potential is below minimum standard defined by the regional plan.

2. "Not available" if the land is legislatively or administratively withdrawn from timber production.

3. "Not suited" if technology is not now available or none is expected to be developed within the next 10 years that would permit harvesting which meets silvicultural guidelines.

4. Lands classified as "capable, available, and suited" will be further reviewed and identified as "not suited" if those lands are not needed to meet production goals from the regional plan and "lands are not efficient for producing timber." Additional economic analysis requirements for this determination include: "Any economic analysis will be based on the assumptions that the lands are managed primarily for timber production and are in fully regulated condition; that technically feasible management practices are applied which have a net economic benefit given anticipated future price levels and cost levels reasonable and directly related to efficient and prudent timber management; and that the cost of administration, protection, and access are borne proportionately by those other resource values produced while the land is under primary management for timber."

Alternative 4: The August 31, 1978 draft provides for a 5-step process for identifying lands not suited. The Committee does not consider this adequate and recommends the following procedure:

1. Lands are screened to determine if they are "available" for (i.e., not already designated for other use) timber production;

2. "Available" lands are then screened to identify areas that are "not suitable" for timber production because of physical, technical, biological (including a minimum productivity standard), or environmental factors;

3. Lands passing these tests are then subjected to economic analysis and ranked to determine their relative economic efficiency for commercial timber production; and

4. Alternative land management plans are formulated, lands are allocated to timber harvest on a cost-effective basis, and these allocations then may be adjusted and revised on the basis of multiple-use considerations.

Alternative 6: The treatment of this issue in this alternative is based upon the Committee of Scientists' recommended language and organization. Minimum biological growth standards to be used in the determination of timber production capability will be established by the regional plan using the criteria specified in the regulations. Lands with potential for commercial timber production will be evaluated using the assumptions and criteria in the regulations to determine their relative economic efficiency for this use. Lands which are more "efficient" (relative to other lands) will be allocated for timber production before less "efficient" lands are used. There is no minimum economic return specified in the regulations, nor is there a firm requirement that net benefits must exceed costs for this use.

*Issue No. 6*—Departures.—Alternative 1: The August 31, 1978 draft requires that the allowable sale quantity be determined on the principle of sustained yield and only based on lands "capable, available and suitable." The following requirements are specified:

1. For the base harvest schedule the planned sale and harvest for any future decade must be equal to or greater than the planned sale and harvest for the preceding decade, providing that the planned harvest is not greater than the long-term sustained yield capacity (non-declining flow).

2. Long-term sustained-yield, base timber harvest schedules, and departures are subject to the following guidelines:

A. "For the long-term sustained-yield capacity and the base harvest degree of timber utilization consistent with the goals, assumptions and standards contained in or used in preparation of the current Renewable Resource Program and regional plan. For the long-term sustained-yield capacity, the management and utilization assumptions must reflect those projected for the fourth decade of the regional plan. For the base harvest schedule, the management and utilization assumptions must reflect the projected changes in practices for the four decades of the regional plan. Beyond the fourth decade, the assumptions must reflect those projected for the fourth decade of the regional plan."

B. "For departure alternatives to the base harvest schedule which provide outputs above the current regional plan, assume an appropriate management intensity."

C. "In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period shall generally have reached the culmination of mean annual increment of growth. Mean annual increment must be based on management intensities and utilization standards expressed as units of measure consistent with the regional plan. Exceptions to those standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack; for the improvement of age-class distribution; or for the removal of particular species of trees after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of a forest plan."

D. "For all harvest schedules, achieve a forest structure by the conclusion of the scheduling period that will enable perpetual timber harvest thereafter at the long-term sustained-yield capacity, consistent with the long-range multiple-use objectives of the alternatives."

3. Departures should be considered under any of the following conditions:

A. "None of the timber harvest alternatives formulated has the capacity to produce the goods, services, or uses

to meet objectives specified for the area by the regional plan."

B. "Attainment of the multiple-use objectives of the forest plan will be enhanced by more rapid and efficient achievement of the long-term sustained-yield capacity of the forest owing to present forest structure or by reducing high mortality losses."

C. "Implementation of the base harvest schedule would cause instability or dislocation in the economic area in which the forest is located."

4. The proposal also specifies how the harvest schedule is to be selected:

A. "Selection of a harvest schedule must be made following a comparison of management alternatives. . . . This comparison must include an evaluation of the sustained-yield goals, silvicultural standards and guidelines, and the effects of timber removal on other resources. . . . The selected harvest schedule provides the allowable sale quantity, or the quantity of timber that may be sold from the area of land covered by the forest plan for the plan period. Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale quantity so long as the total amount sold for the planned period does not exceed the allowable sale quantity."

Alternative 2: The proposal would not permit departures within the regular planning process, but specifies that a forest plan may be amended to increase or decrease the allowable sale in the following manner:

1. Regional Forester may ask the Chief, Forest Service to "consider" departure if departure would "enhance" multiple use objectives by "improving age-class distribution, reducing high mortality losses, or reducing conflicts."

2. The Regional Forester must submit a report giving information to support recommended departure.

3. The Chief may agree to "consider" departures and direct the Forest Supervisor to prepare proposals, and draft and final EIS's are required for proposals.

4. In formulating proposed departures, the following is required:

A. Each departure proposed shall reflect management direction established in the forest plan regarding constraints on harvest, type of silvicultural systems to be used, and silvicultural standards and guidelines. Lands that would be affected by the increase or decrease in harvest level shall be specifically identified;

B. Each departure shall assume a degree of timber utilization and management intensities consistent with those assumed in the preparation of the base timber harvest schedule and demonstrate that forest structure by the end of the planning horizon would enable perpetual harvest thereafter at the long-term sustained-yield capacity; and

C. Each departure shall be evaluated in accordance with regulations covering estimated effects of alternatives and compared with the forest plan. Such comparison shall include an evaluation of the consistency of the departure with the multiple-use objectives of the forest plan.

5. The Secretary, after review of the final EIS, must approve all departure proposals.

Alternative 3: The proposed alternative altered the provisions set out in Alternative No. 1 in the following ways:

1. For base timber harvest schedule(s) "the planned sale and harvest for any future decade must be equal to or less than the long-term sustained-yield capacity" rather than the preceding decade and "the total harvest must also be the maximum achievable from the forest during the first rotation."

2. Add an exception to the standards for assuring that all even-aged stands scheduled to be harvested generally have reached the culmination of mean annual increment of growth—"for the improvement of age-class distribution."

3. "For all harvest schedules, other than the base harvest schedule, achieve a forest structure by the conclusion of the forest rotation that will enable sustained-yield capacity, consistent with the long-range multiple-use objectives of the alternatives."

4. An additional condition for departure was added. "Implementation of an alternative plan would provide greater public benefits, including, but not limited to a combined flow of public and private timber that better meets local and national demands or achieving to the extent possible a better balance between expenditures for timber management and the return to the Federal Government from the sale of timber and the value of other related uses."

5. Additional factors were added in the step for selecting the harvest schedule:

A. "Selection of harvest schedule must be made following a comparison of management alternatives and the public benefit to be achieved from each."

B. "The responsible Forest Service official shall describe in writing the justification for the selection made and the standards used."

Alternative 4: The Committee recommends adoption of the principles in the August 31, 1978 draft with the addition of:

1. Statement of basic policy with regard to timber harvest scheduling;

2. Language to make clear that departures from the base harvest schedule and the planning required for departures is discretionary; and

3. Authority for approving any departure above the base timber schedule should lie with the Chief.

Alternative 6: The Committee of Scientists' proposals have been adopted. With the exception of specifying that the Chief, Forest Service, must approve departures, this alternative for the regulations is similar to the original draft requirement concerning this issue. Consideration of local economic disruptions has been maintained.

*Issue No. 7*—Size of Openings Created by Harvest Cutting

Alternative 1: The August 31, 1978 draft requires that maximum size limits for clearcutting will be determined through the regional planning process.

Alternative 4: The Committee alternative agrees with the August 31, 1978 draft that maximum size limits be set regionally.

Alternative 6: This alternative for the regulations establishes the maximum size for openings created by timber cutting. These maximum sizes are: 60 acres for the Douglas fir forest type of California, Oregon, and Washington; 100 acres of the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. There are provisions for exceptions to these size limits. These are:

1. Regional plans may specify smaller maximum sizes for geographic areas of forest types based upon the factors detailed in the revised regulations.

2. Regional plans will include provisions for exceptions that will permit larger size openings than those specified in the regulations. The minimum set of factors to be considered for exceptions is outlined in the revised regulations. Forest plans must conform to the size limitations established by the regional plan. Any exceptions (except catastrophic losses) to exceed the 60-, 100- or 40-acre maximum size limits must be approved by the Chief, Forest Service. At least 30 days public notice must be given before the size limits may be exceeded.

Alternative 7: The revised draft regulations require that maximum size limit for harvest cut openings will be determined through the regional planning process.

*Issue No. 8*—Public Participation

Alternative 1: The August 31, 1978 draft regulations use a theme of criteria to achieve compliance and uniformity.

This concept of rulemaking provides latitude for adaptation to future social changes, but does not specifically state standards on the role the public may exercise in the decision process. Standards are established for the availability of documents and their required residence. Criteria for the type of meetings to be held and where in the process they are to take place are discretionary in this version of the regulations. The administrative appeals process is unchanged in this alternative.

Alternative 4: The Committee of Scientists' version of the regulations contain more specific requirements in several areas. The Committee felt that the vague and broad discretion in the August 31, 1978 draft regulations would "lead to discontent and an unhappy, uninformed public."

The more specific areas recommended by the Committee of Scientists are:

1. A general policy statement and objectives of public participation.
2. Provide for a mutual program of information and educational exchange.
3. Provide explicitly for public participation at: the beginning of the process, after conclusion of inventories and assessment, and before a preferred alternative is chosen.
4. The responsible official should show evidence that all public input to the plan has been analyzed, evaluated and considered.
5. More specific language on the kind of places to meet such as county courthouses in affected counties.
6. The nature of public participation be made more explicit by:

A. Stressing that informal activities are to be encouraged for information exchange.

B. Stating that notifications shall be made highly visible.

C. Officials responsible shall continue to meet all other obligations for carrying out public participation requirements.

7. The public should be made aware of the kinds of informational materials that will be available.

In summary, the Committee of Scientists' version of the regulations on public participation in the planning process proposes more prescriptive rules than the August 31, 1978 draft regulations. The administrative appeals process is unchanged in this alternative.

Alternative 6: Much of the language and organization recommended by the Committee of Scientists has been adopted in the revised regulations. As a result, the revised version is significantly more detailed than the original draft. The revision includes explicit material on the purpose of public participation, required public notices, and the manner in which public input will be used in the planning process. In addition, the public participation responsibilities of the interdisciplinary team have been clarified. One important change has been made to the limitation for public comments. This alternative provides for 90 days written responses for national and regional planning comments (original draft specified 60 days). The appeals process is modified in this alternative. Objections to planning decisions (to adopt plans) in this alternative are excluded from review under the current administrative appeal procedure.

*Issue No. 9*—Management of Wilderness Areas and Disposition of Roadless Areas

Alternative 1: The August 31, 1978 draft regulations require that:

1. Lands designated by Congress or the Forest Service as suitable for wilderness will be studied for possible inclusion in the Wilderness System; lands designated to be managed for non-wilderness will not be considered for possible wilderness in the first generation of forest plans.
2. During the 15th-year revision (second generation) of forest plans, other areas will be evaluated for possible wilderness designation.
3. The "appropriateness" of designating the lands under 2 above will be considered.
4. Forest plans must provide direction for management of designated Wilderness and Primitive Areas.

Alternative 4: Committee recommends clarifying language to address two issues: Identifying and appraising additional candidate areas, and establishing maximum allowable levels of use. Key provisions include:

1. Forest plans will include an evaluation of the wilderness resource present and provide management planning for it.
2. All potentially eligible lands should be considered at each revision of the forest plan.
3. Costs and benefits should be considered in the same way as are other resources in considering wilderness status.
4. Criteria for designation should be evaluated continuously as experience dictates; and
5. Determination of "carrying capacity" should be made for each area.

Alternative 6: The proposals recommended by the Committee of Scientists have been adopted in the revised regulations. In addition, the language of the original draft has been altered in order to clarify the factors to be considered in evaluating wilderness potential and wilderness area management. Minerals development considerations are not addressed specifically in regard to wilderness issues; however, provisions for these concerns are included elsewhere in the revised regulations. Requirements are specified to ensure that levels and kinds of wilderness use are evaluated and considered in wilderness management. Special attention is also required for off-site impacts and adjacent area management.

*Issue No. 10*—Coordination

Alternative 1: The August 31, 1978 draft requires coordination with "other affected public entities and Indian tribes." Notice of preparation or revision of forest plans must be given to State agencies, Indian tribes, and heads of county boards affected. Documentation of all consultation is required.

Alternative 4: Committee proposes substitute language to assure that other governmental units understand how they can be involved in Forest Service planning, that the Forest Service make real efforts at coordination, and that Forest Service planners will evaluate and consider the plans of other governmental units as they develop plans. Specifically, recommendations include requirements that:

1. The responsible Forest Service officials be aware of the plans and policies of other units of government;
2. Appropriate State and local government representatives be involved and consulted;
3. A request be made of each State for appointment of a person to coordinate State involvement;
4. The forest plan documents that plans, programs and policies of other units of government have been analyzed;
5. Coordination take place at crucial times in the planning process;
6. An attempt to be made to identify goals and plans of owners of intermingled private lands; and
7. That there be coordination within the Forest Service in the designation of special purpose areas.

Alternative 6: With some minor modifications, the Committee of Scientists' detailed proposals have been adopted.

*Issue No. 11*—Protection of Riparian Areas

Alternative 1: This version of the regulations speaks indirectly to management of the riparian area in the water and soil resources section. These regulations direct that existing or potential watershed conditions that will influence soil productivity, water yield, water pollution or hazardous events will be evaluated.

Alternative 4: This alternative provides prescriptive regulatory language as protection for riparian areas. It provides for special attention to be given to a strip approximately 30 meters wide along both sides of all perennial streams, lakes and other bodies of water. Any activities conducted in this area would be carried out so as not to result in detrimental change and only carried out if multiple-use benefits exceed costs.

Alternative 6: The treatment of this issue in the revised regulations is based primarily upon the recommendations of the Committee of Scientists. This alternative proposes that special attention be given to lands and vegetation for approximately 100 feet along both sides of all perennial streams, lakes, and other bodies of water. All management activities which seriously and adversely affect water conditions or fish habitat will be permitted only if conducted so as to protect these waters from detrimental change. Interdisciplinary teams will determine constraints to be placed on management activities in the riparian area to assure protection of water quality and other multiple-use values.

Alternative 7: This alternative requires that special attention be given to riparian areass (perennial streams, lakes and other bodies of water). The riparian area will be identified using criteria established in regional plans.

*Alternative 8—The Preferred Alternative*

This alternative is a revision of the May 4, 1979 Draft Environmental Impact Statement Preferred Alternative (Alternative 6). Alternative 8 was created as the result of review and analysis of public comments on the May 4, 1979 Preferred Alternative version. The Committee of Scientists' views on the May 4 version was included in the public comment analysis. While there are some minor changes in all major provisions of the Regulations, significant changes are displayed in the Table presented below. For example, some changes of interest are: (1) Planning process descriptions are strengthened to exhibit and describe the links between the RPA Program and Assessment, and regional and forest planning; (2) The process for determining lands not suited for timber production is clarified to show how certain physical and economic factors are interpreted to determine land suitability for production, and how this relates to formulating alternatives to meet multiple use management objectives; (3) The consideration of departures from the base harvest schedule is to be unconstrained during planning and is mandatory under certain stated conditions. However, the final selection of a departure alternative is keyed to the principle that it must be consistent with the multiple use objectives stated in the land management plan; (4) The approval or disapproval of forest plans is appealable under 36 CFR 211.19, but not for regional plans. For the latter, a reconsideration process is established. The reconsideration and appeal process is described under 219.9 and 219.11, respectively; (5) Provisions are made for developing and adopting common data definitions and standards to be applied between all planning levels. Data acquisition is to be scheduled and planned, and its nature is to be appropriate for the management decisions required; (6) An 80-acre size-of-harvest-cut opening is established for the yellow pine types in certain southern states; (7) The 100-foot "special attention" zone around water bodies is expanded to include recognition of riparian ecosystems.

**Location and Description of Major Changes in DEIS Preferred Alternative No. 6 and Incorporated into FEIS Alternative No. 8, Preferred Alternative**

| Regulation section DEIS | Regulation section FEIS | Nature of the change |
|---|---|---|
| 219.1(b) | 219.1(b) | Additional text for clarification and description of planning fundamentals. |
| | 219.3(c) | Definition added for base timber harvest schedule. |
| | | Definition added for biological growth potential. |
| 219.3(h) | 219.3(j) | Clarification—definition consistent with CEQ Regulations (environmental documents). |
| | 219.3(m) | Definition added for goods and services. |
| 219.3 (o) and (p) | 219.3 (r), (s), (t), (u) | Expanded definitions for management direction, intensity, practice, prescriptions; to clarify the relation between practices and prescriptions. |
| | 219.3(x) | Previously overlooked definition for planning area added. |
| 219.4(b)(1) | 219.4(b)(1) | Revises description of National level Assessment and Program activity and clarifies relationship to regional and forest level planning. |
| 219.4(c)(1)(4) | | Deleted as superfluous. |
| 219.5(c)(6) | 219.5(c)(6) | Establishes rule for determining discount rate to be used. |
| 219.5(d) | 219.5(d) | Provides for variable data resolution based on nature of decisions to be made, that data needs are to be analyzed, planned, and acquisition scheduled; and provides for adoption of common data definitions and standards. |
| 219.5(f) | 219.5(f) | Formulation of alternatives rewritten to reduce ambiguity, |
| 219.5(g) | 219.5(g) | Estimated effects of alternatives expanded to include measurements of effects from meeting targets established through RPA Program. |
| 219.5(g)(5)(iii) and (iv) | | Deleted—redundant. |
| 219.6(a) | 219.6(a) | Paragraph expanded to provide more explicit direction and philosophy concerning interdisciplinary approach to planning. |
| 219.6(b) | 219.6(b) | Adds areas of professional knowledge and makes consultation obligatory when specialized knowledge on team is not available. |
| 219.7(d) and (e) | 219.7(d) and (e) | Revised to provide more explicit direction about public participation process and use of information. |
| 219.7(a) | 219.7(a) | Deleted. (See 219.9(b) and 219.11(c).) |
| | 219.8(j) | New text to provide for monitoring effects of plan implementation on adjacent, private and other ownership lands. |
| | 219.9(b) | New text to exclude decisions to approve or disapprove regional plan from administrative appeals procedure; provides for reconsideration of such decisions; provides for stays of implementation. |
| 219.10(c) | 219.10(c) | Rewritten for clarification to show how plans must respond to and reflect RPA program goals and objectives. |
| | 219.11(c)(4) | New text to replace DEIS text in 219.7(c); provides for appeals of decisions to approve or disapprove a forest plan; specifies procedures for remand, revision and amendment; describes process for requesting stay of implementation, and prerequisites for potential appellants to file for appeals. |
| 219.11(g) | 219.11(g)(1) and (2) | Clarifies and augments considerations required in regional management situation analyses. |
| 219.11(h) | 219.11(h) | To explicitly state that the Forest Plan is the selected alternative from the FEIS. |
| 219.11(h)(3) | 219.11(h)(3) | Rewritten to make explicit that forest plan will contain statement of multiple use management objectives. |
| 219:12(b)(2)(3)(4) | 219.12(b)(2)(3)(4) | Rewritten to clarify the process of determining lands not suited. |
| 219.12(d)(1)(ii)(D) | 219.12(d)(1)(ii)(D) | Clarifies and simplifies language. |

Location and Description of Major Changes in DEIS Preferred Alternative No. 6 and Incorporated Into FEIS Alternative No. 8, Preferred Alternative—Continued

| Regulation section DEIS | Regulation section FEIS | Nature of the change |
|---|---|---|
| 219.12(d)(1)(iii) | 219.12(d)(1)(iii) | Rewritten for clarity; establishes that departures will be considered during planning when certain conditions exist. |
| 219.12(e)(1)(ii) | 219.12(e)(1)(ii) | Expanded to insure interagency cooperation and coordination. |
| 219.12(g)(2) | 219.12(g)(2) | Provides that indicator species may be vertebrate and/or invertebrate. |
| 219.13(d)(2) | 219.13(d)(2) | Adds yellow pine type and sets 80-acre limit for harvest openings in certain southern states. |
| 219.13(e) | 219.13(e) | Revised to include at least the area covered by the riparian ecosystem. |
| 219.13(g) | 219.13(g) | Revised to reflect terms as used in the NFMA ("plant and animal communities," and "tree species"). |

*Issue No. 1*—Planning Process Framework. This alternative incorporates some new or amended language to generally strengthen the overall planning process, including the addition of some new definitions. The relationship of forest and regional planning to the Assessment and Program is clarified and strengthened in terms of identifying information transfers and specifications that plans must describe how they respond to program goals and objectives, as well as state the multiple use management objectives for the planning area. The data and information acquisition process is expanded to require analysis of these needs.

*Issue No. 2*—Interdisciplinary Approach. This alternative amplifies the philosophy underlying the approach to planning.

*Issue No. 3*—Diversity. Some editorial revisions have been made to clarify terms and intent of the regulations. The treatment of this issue remains in concept basically unchanged from the DEIS preferred alternative. The legislative language "diversity of plant and animal communities" and "diversity of tree species" is maintained in the proposed regulations.

*Issue No. 4*—The Role of Economic Analysis. A provision has been added which specifies that the discount rate for analysis is to be established by the Chief and in the absence of such an established rate, the rate used in the RPA program may be used. Some minor editorial changes have been made including the deletion of repetitious material.

*Issue No. 5*—Determination of Lands Not Suited for Timber Production. The provisions in regulations for determining lands not suited for timber management has been modified to clarify the process and to specifically portray that these determinations will first be based upon economic and physical factors, then integrated to provide for evaluating effect and/or achievement on multiple use objectives. The reason for this change was the previous language provided only for the determination to be based on effects and/or achievements of single functional objectives. The interdisciplinary team, with review of public comment, felt this revision of provision more closely reflects the legislative intent.

Other provisions remain essentially the same as described in Alternative 6.

*Issue No. 6*—Departures. The provision for making departures in the DEIS Preferred Alternative appeared to many reviewers to be more broad than what NFMA seems to permit. Therefore, and substantially in response to public comment, the language was clarified to illustrate that the consideration of departure alternatives will be unconstrained during planning and is mandatory under certain conditions. However, if any departure alternative is to be selected, it must be consistent with multiple use objectives stated in the land management plan.

*Issue No. 7*—Size of Openings Created by Harvest Cutting. The treatment of this issue in Alternative 8 is identical to that of Alternative 6, except that an 80-acre size limit is established for yellow pine types in certain southern states.

*Issue No. 8*—Public Participation. Public participation provisions are identical to those in the DEIS Preferred Alternative (No. 6) except for the matter concerning appeals. In the Preferred alternative, appeal is discussed under §§ 219.9 and 219.11. The approval or disapproval of forest plans is appealable under 36 CFR 211.19. Such appeal was excluded in the DEIS. The approval or disapproval of regional plans is, however, excluded from review under 36 CFR 211.19, but provisions are made for reconsiderations of decisions by the responsible officer. In the case of forest plans, the appeals process is made consistent with intent of NFMA regarding the revisions of plans, public participation in those revisions, and the role of the interdisciplinary team in the process.

Appeals of actions or decisions subsequent to implementation of the regional plan are permitted in the Preferred Alternative. This alternative also has an added requirement defining the kind of information required to support requests for stays of decisions to approve or disapprove forest or regional plans, or subsequent actions or decisions.

*Issue No. 9*—Wilderness. This alternative is the same as origin—area presented in the DEIS Preferred Alternative.

*Issue No. 10*—Coordination. The treatment of this issue in Alternative 8 is identical to that of Alternative 6 except a provision is added which requires monitoring to consider the effects of managing the NFS on adjacent and nearby lands managed or under the jursidiction of other government agencies or local.

*Issue No. 11*—Protection of Riparian Areas. Alternative 6 has been revised to provide that special attention zone will at least include the riparian ecosystem. Also, factors are listed which will be considered in determining what management practices may be undertaken in these areas.

## V. Effects of Implementation

A major effect of the alternative regulations proposed—if adopted—will be to integrate land management planning and functional (resource) planning. Planning of lands and resources of the National Forest System will be conducted by interdisciplinary teams rather than by individual resource or functional staff units. In many cases the same people and skills will be involved but in a different way. Some additional personnel ceilings will be required because of new skill requirements such as analysts, economists, biologists and writers.

Although resource management planning has always been a major responsibility in the Forest Service, the emphasis has primarily been on functional planning rather than on integrated resource planning (called multiple-use planning, unit planning, multi-disciplinary planning, etc.). In most instances functional planning remained a separate activity. Functional planning and land management planning often were carried out relatively independently, and budgeting was still along functional lines; the outcome was inevitable: land management planning became in itself a function, much like range management, timber management, and engineering. NFMA requires an integrated plan for each unit of the National Forest System. The planning process prescribed in the alternatives

establishes an interdependency of land management and resource planning.

The specific effects of implementing any of the alternative regulation proposals are virtually impossible to quantify. Regulations developed to direct the process of preparation and revision of land management plans have no direct effect on the human environment. The regulations do not commit land or resources. They only establish procedures, and standards and guidelines for planning future commitments. Some general qualified effects or impacts of alternatives are presented below in table form by issues.

Actual effects on the production of goods and services will be determined and verified when the planning is completed. Impacts will be identified in regional or in individual forest plans. These plans are subject to a complete environmental assessment with maximum public participation. Effects generated by the land and resource management alternatives will be analyzed in the environmental impact statement prepared during the actual planning effort.

There are several provisions within each alternative that affect the output of goods and services, particularly timber production. The determination of the allowable sale quantity will directly affect the level of timber available from the National Forests. This is particularly true if departures from non-declining flow are considered and selected. The identification of lands not suited for timber production may reduce the commercial forest land base, particularly where the minimum biological growth potential standard is set above the current minimum of 20 cubic feet per acre per year. Also, establishment of the maximum size of harvest cut opening and the protection of riparian areas will affect the overall cost of timber production or the total level of supply.

Generally, some outputs will decline temporarily. However, the capacity exists to expand activities with higher level investments so that most outputs could be increased in the long run.

The increased requirements imposed by the NFMA and regulation will increase costs through 1985 or until all plans are developed. This would be primarily due to establishment of the new procedures, requisite training needs, and the variations anticipated between the various National Forests and Grasslands in terms of planning already accomplished or in progress. As the Forest Service becomes more familiar with the new process, the cost should decline. There should be no significant difference between alternatives in long-term costs to the Forest Service as any particular alternative regulation might be promulgated. The integration of all planning efforts into one process should eventually reduce the costs.

Land management planning in the recent past has cost about $14 million annually. The anticipated annual costs and additional man years through 1984 are shown in the following table. The table reflects plans as currently scheduled. Costs include planning at all three levels, forest, regional and national.

| Fiscal year | Number of forest plans | Total annual costs | Increased man years for planning functions | Cumulative man years over 1978 base year |
|---|---|---|---|---|
| 1979 | 10 | $19,850,000 | +60 | 60 |
| 1980 | 30 | 21,100,000 | +30 | 90 |
| 1981 | 30 | 22,500,000 | +30 | 120 |
| 1982 | 30 | 22,800,000 | 0 | 120 |
| 1983 | 30 | 23,200,000 | 0 | 120 |
| 1984 | 20 | 14,700,000 | −60 | 60 |
| 1985 | 4 | 12,000,000 | −60 | 0 |

These costs reflect an increase for what has been land use or land management planning historically. New skill requirements, the need for additional personnel ceilings, and the uncertainty of the availability of the skills could require more contracting and resultant higher costs. Monitoring requirements may also add significantly to costs.

The effects of implementing alternative regulations on the physical and biological environment are not measurable except qualitatively. Each alternative set of regulations enhances plant and animal diversity, protects soil and water values and the visual resource, and ensures long-term productivity. The actual results will be known after the individual forest or regional plans are completed.

The alternative regulations require that a monitoring and evaluation process be identified and adhered to as a part of plan implementation. This process will: reveal how well the objectives of the forest plan have been met; quantify the effects of management activities upon the physical and biological environment; and develop a data base for plan updating.

There is no reliable way to estimate quantitatively the effect on the economic environment of promulgating any of the alternative regulations. It is assumed that better management decisions will result from improved economic analysis, because those decisions will be based on cost effectiveness data. Overall management of the NFS should become more cost effective and efficient.

Effects upon the social environment are difficult to quantify. No significant impacts or differences between alternatives are anticipated. The social environment is defined as the composite of social variables likely to be affected by planning for management of the NFS: population, dynamics, community economy, educational quality, health and environment, housing quality, leisure opportunities, community identity, minorities, and land use and tenure. Specific social effects will be determined and evaluated through the planning process for the appropriate level of planning. Public participation is required throughout the development and revision of all plans, resulting in more public awareness and understanding of National Forest System management.

This particular requirement is responsive to the concerns expressed before the NFMA was passed and specifically to Section 6(d) of the Act.

*Relative Effects of Alternatives by Issues:* To establish a basis for measuring anticipated implementation effects of each alternative, an independent set of key variables was identified by the interdisciplinary team for each issue. These variables are the factors affected by alternatives. The tables show in relative terms how the alternatives impact the factors listed. Language for alternatives 2 and 3 apply only to issues 5 and 6. Therefore, impacts for these two alternatives are shown only for these two issues. Language for Alternative Nos. 6 and 7 is the same for all issues except 7 and 11. Therefore, impacts for Alternative 7 are shown only for these two issues.

*Issue No. 1—The conceptual framework for an integrated planning process.* As discovered earlier there are a number of different conceptual frameworks for attempting both vertical and horizontal integration of the planning process. Integration requires a link vertically between the organizational hierarchy of national, regional and local levels, and a merging functionally at the local level the planning of range, wildlife and fish, recreation, timber, water, minerals, and other resources. Therefore, the conceptual method chosen has a significant effect on further options for resolving other issues. For example the incremental approach limits public participation in long-range decisions, while mixed scanning framework tends to enhance this option. (See appendix B.)

The practical concerns surrounding this choice relate to such basic items as public participation, the decision process, and agency responsiveness.

The alternative choice for how the regulations are to be promulgated under a given conceptual framework may have long reaching effects on how the integrated planning process will be carried out.

Issue No. 1.—*(Planning Framework) Relative Effects of Alternatives*

| Impact of alternative on | Alternative No. 1 | 4 | 6 | 8 |
|---|---|---|---|---|
| Public perception of process [1] | 2 | 3 | 4 | 5 |
| Agency responsiveness to deal with issues [2] | L | M+ | M+ | M+ |
| Planning and decisionmaking process [3] | 2 | 4 | 4 | 5 |

[1] On a continuum of increasing understanding from 1 to 5, with 5 high.
[2] Response to external stimuli as low, moderate or high.
[3] On a continuum of increasing complexity from 1 to 5, with 5 high.

*Issue No. 2—Interdisciplinary Approach.* The major debates over regulations on the interdisciplinary teams and approach have focused on technical more than behavioral characteristics. Team composition and leadership have been discussed from differing viewpoints, as well as individual qualifications necessary for legitimate memberships. In addition there has been continuing concern over the role the interdisciplinary team will play in the decisonmaking process. The key effects evaluated for this issue are team formation, duties and qualifications.

Issue No. 2.—*(Interdisciplinary Approach) Relative Effect of Alternatives*

| Impact of alternative on | Alternative No. 1 | 4 | 6 | 8 |
|---|---|---|---|---|
| Team formation [1] | 1 | 3 | 4 | 4 |
| Team duties [2] | 2 | 4 | 4 | 4 |
| Team member qualifications | 1 | 4 | 4 | 4 |

[1] Continuum from (1) discretionary to (5) specific composition.
[2] Continuum from (1) weak to (5) strong direction given.
[3] Continuum from (1) discretionary to (5) specific requirements.

*Issue No. 3—Diversity.* Diversity is the condition of being different. The classification, measurement and control of the elements which make up diversity of forests and ranges are activities associated with managing renewable resources. It is the proportional distribution of diverse situations, such as different habitats, that determines the availability of timber, wildlife, range production, recreation, streamflow, aesthetics and other benefits. Therefore, diversity determinations have important implications in terms of opportunities for resource planning and management options.

Issue No. 3.—*(Diversity) Relative Effects of Alternatives*

| Impacts of alternative on | Alternative No. 1 | 4 | 6 | 8 |
|---|---|---|---|---|
| Genetic variability [1] | ([4]) | ([5]) | ([4]) | ([5]) |
| Type conversion [2] | 2 | 4 | 4 | 4 |
| Planning process [3] | 4 | 2 | 2 | 3 |

[1] Relative to current situation. Genetic variability includes for this analysis habitat diversity.
[2] Continuum from (1) to (5) toward increasing complexity.
[3] Relative ease to convert to another type (tree species) on a scale from (1) to (5) toward increasing difficulty.
[4] No change.
[5] Increase.

*Issue No. 4—Role of Economic Analysis.* Analysis for determination of both efficiency and impacts has generated considerable debate. Much of it centers on the "state of the art" and the possibilities of a given technique being universally practical for nationwide implementation. The nature of economic tests to be made and whether Congress intended that benefits must exceed costs for proposed management practices are the key considerations for measuring effects of alternatives in the issue.

Issue No. 4.—*(Role of Economic Analysis) Relative Effects of Alternatives*

| Impact of alternatives on | Alternative No. 1 | 4 | 6 | 8 |
|---|---|---|---|---|
| Planning process [1] | 2 | 4 | 3 | 3 |
| Nature of analysis required [2] | 2 | 4 | 3 | 3 |
| Capability of Forest Service to implement direction [3] | 4 | 2 | 3 | 3 |

[1] Increasing complexity on a scale of (1) to (5).
[2] Continuum from (1) none specified processes in terms of complexity or rigor.
[3] Low to High on a scale of (1) to (5).

*Issue No. 5—Lands Not Suited for Timber Production.* The issue in the "lands not suited for timber production" question appears to be a means, not ends, question. There is little disagreement over the desired results that there should be identified in the land management planning process lands not suited for timber production. The debate focuses on where in the process this identification should occur and how prescriptive the analysis screens should be in the regulations.

Issue No. 5—*(Lands Not Suited) Relative Effects of Alternatives*

| Impact of alternatives on | Alternative No. 1 | 2 | 3 | 4 | 6 | 8 |
|---|---|---|---|---|---|---|
| Total commercial timber base and supply [1] | 3 | 5 | 2 | 2 | 3 | 3 |
| Wildlife habitat abundance/diversity [2] | 3/3 | 4/3 | 2/3 | 3/3 | 3/3 | 4/4 |
| Planning process [3] | 2 | 5 | 2 | 4 | 4 | 4 |
| Amenities [4] | 3 | 5 | 2 | 3 | 3 | 4 |

[1] Compared to current situation on a scale of (1) least to (5) most reduction excluding consideration of multiple use objectives.
[2] In terms of increasing abundance and diversity on a scale of (1) to (5), 5 high.
[3] Increasing complexity on a scale of (1) to (5).
[4] In terms of tendency to improve overall quality of water and visual resources, scale (1) to (5), 5 high.

*Issue No. 6—Departures.* The National Forest Management Act requires as a general policy that the Secretary limit the sale of timber from each National Forest to a quantity which can be removed annually in perpetuity on a sustained-yield basis with the discretion to depart from this policy in order to meet overall multiple-use objectives. This provision is found in a separate section of the Act (Section 11, or provisions (Section 6). This separation has caused some interests to believe that the determination of the timber allowable sale quantity should be handled either outside of the land management planning process or as a separate and distinct step after the land management plan has been completed.

Provisions within Section 6 clearly provide that decisions on the level of timber harvest be made within the integrated land management planning process. It is also required by NFMA that if a departure is selected, that it must be consistent with the multiple use management objectives stated in the land management plan.

Issue No. 6—*(Departure) Relative Effects of Alternatives*

| Impacts on alternatives on | Alternative No. 1 | 2 | 3 | 4 | 6 | 8 |
|---|---|---|---|---|---|---|
| Planning process [1] | 2 | 5 | 2 | 3 | 3 | 3 |
| Opportunity to change timber supply [2] | 4 | 1 | 5 | 3 | 3 | 3 |

[1] On a scale of (1) low to (5) high toward increasing difficulty to make a departure.
[2] On a scale of (1) to (5) toward increasing agency flexibility to make determinations.

*Issue No. 7—Size of Openings.* At debate is the issue of the size of harvest cut opening to be allowed within a given silvicultural system. Should size standards be stated prescriptively or should size be harvest cut opening to be allowed within a given silvicultural system. Should size standards be stated prescriptively or should size be determined through the planning process on a regional or site specific basis?

**Issue No. 7—*(Size of Openings) Relative Effects of Alternatives***

| | Alternative No. | | | | |
|---|---|---|---|---|---|
| | 1 | 4 | 6 | 7 | 8 |
| Impacts of alternatives on | | | | | |
| Per acre harvest costs [1] | No change | No change | Increase | No change | Increase. |
| Water quality | No change | No change | Increase | No change | Increase. |
| Timber supply [2] | No change | No change | Decrease | No change | Decrease. |

[1] Relative to current situation which in this analysis is alternative No. 7.
[2] Relative to current situation. Increase harvest costs means some marginal sales become unavailable, thus reducing harvest in some areas.

*Issue No. 8—Public Participation.* Public participation in Forest Service decisionmaking has been an issue of experimentation and debate since the passage of the National Environmental Policy Act in 1969. Central to the issue is the openness that shall be maintained by the agency so that the public may become informed about National Forest matters and, if sufficiently interested, to participate through various forums, including the administrative review procedures, in the development, review and revision of land management plans.

**Issue No. 8—*(Public Participation) Relative Effects of Alternatives***

| | Alternative No. | | | |
|---|---|---|---|---|
| Impacts of alternatives on | 1 | 4 | 6 | 8 |
| Planning process [1] | 2 | 4 | 4 | 5 |
| Publics' awareness and understanding [2] | 2 | 4 | 5 | 5 |
| Public access to the decision process | 4 | 4 | 3 | 5 |

[1] Increasing complexity on a scale of (1) to (5).
[2] Increasing improvement on a scale of (1) to (5).

*Issue No. 9—Management of Wilderness and Disposition of Roadless Areas.* How often and to what extent shall wilderness values be considered? At issue is the question of whether undeveloped areas should be considered for wilderness during each major plan revision if they are still in an essentially natural state, and should maximum levels of use be deferred through regulations?

**Issue No. 9.—*(Wilderness Management) Relative Effects of Alternatives***

| | Alternative No. | | | |
|---|---|---|---|---|
| Impacts of alternatives on | 1 | 4 | 6 | 8 |
| Disposition of RARE II area [1] | No | Yes | No | No |
| Use of areas [2] | 2 | 4 | 4 | 4 |

[1] To consider in land and resource management plan before 1985.
[2] Process for determining potentials of areas and limitations to be placed on them is from (1) discretionary and unspecified to (5) required and specific.

*Issue No. 10—Coordination.* At issue is the amount and level of coordination that should be required during land and resource management planning between the Forest Service and other planning entities. Whether prescriptive requirements or process direction for achieving desired end results is the matter to be evaluated.

**Issue No. 10.—*(Coordination) Relative Effects of Alternatives***

| | Alternative No. | | | |
|---|---|---|---|---|
| Impact of alternative on | 1 | 4 | 6 | 8 |
| Planning process [1] | 2 | 4 | 3 | 4 |
| Levels of awareness and understanding [2] | 2 | 4 | 3 | 3 |

[1] Increasing complexity on a scale of (1) to (5).
[2] Increasing improvement on a scale of (1) to (5).

*Issue No. 11—Protection of Riparian Areas.* The riparian ecosystem represents one of the richest areas in terms of flora and fauna within the National Forest System. The scientific community is divided on whether this ecosystem is fragile or resilent. There are many demands in this zone; for aesthetics, water quality consideration, recreation opportunities, road construction opportunities, wood, forage and wildlife opportunities. It's also a nice place to eat your lunch.

Conflicting demands for uses in these areas are escalated in the more arid parts of the West where this ecosystem is more scarce. The principle issue is the degree to which the regulations prescribe standards for riparian areas.

**Issue No. 11.—*Protection Strips in Riparian Areas Relative Effects of Alternative***

| | Alternative No. | | | | |
|---|---|---|---|---|---|
| Impacts of alternatives on | 1 | 4 | 6 | 7 | 8 |
| Planning process [1] | 1 | 5 | 5 | 4 | 5 |
| Per acre harvest costs [2] | No Change | Increase | Increase | No Change | Increase. |
| Amenity values [3] | No Change | Increase | Increase | No Change | Increase. |
| Timber supply [4] | 1 | 2 | 2 | 1 | 2 |
| Wildlife and fisheries habitat | No Change | Increase | Increase | No Change | Increase. |

[1] Increasing complexity on a scale of (1) to (5).
[2] Relative to current situation.
[3] Water and scenic quality.
[4] Relative to current situation on a scale of (0) no reduction to (3) most reduction.

## VI. Evaluation of the Alternatives

Various approaches for planning, numerous definitions of terms, and a variety of alternative descriptions and language for management standards and guidelines were analyzed and evaluated almost continuously throughout the development of the proposed regulations. The following is an evaluation of how the alternative sets of regulations meet the evaluation criteria described in Section III.

**Between Alternative Evaluation**

| | Alternative No. | | | | | | |
|---|---|---|---|---|---|---|---|
| Selection criteria [1] | 1 | [3]2 | [3]3 | 4 | 6 | 7 | 8 |
| Effectiveness of meeting congressional intent on NFMA | 3 | 2 | 2 | 4 | 4 | 3 | 4 |
| Basis in technical and scientific principle | 3 | 2 | 3 | 5 | 4 | 5 | 4 |
| Acceptable to public | 1 | 2 | 1 | 4 | 5 | 4 | 5 |
| RPA program goals | | | | | | | |
| Amenity values [4] | 2 | 3 | 2 | 4 | 5 | 4 | 5 |
| Timber supply [5] | 3 | 1 | 5 | 2 | 2 | 4 | 2 |
| Conformity with executive order #12044 concerning simplicity-clarity of the regulations economic burden [2] | 3/2 | 3/5 | 3/2 | 2/3 | 4/3 | 4/2 | 5/3 |
| Establishing accountability | 2 | 4 | 2 | 4 | 4 | 4 | 4 |
| Capability to implement | 5 | 4 | 5 | 3 | 3 | 3 | 3 |
| Flexibility provided | 4 | 2 | 5 | 4 | 3 | 4 | 3 |

[1] Ratings are on a scale of (1) low to (5) high in terms of how the alternative regulation sets meet the criteria listed. See Section I.I for a full description of each criteria.
[2] Higher number indicates greater burden.
[3] Alternatives 2 and 3 concern only Lands Not Suited for Timber Production and Harvest Schedules. For evaluation purposes these language sets were substituted for the corresponding language in Alternative 1 thus providing a complete regulation set to evaluate.
[4] Expressed in terms of the relative degree of environmental protection adequacy.
[5] Effect on Supply from (1) potential reduction to (5) potential increase.

*Rationale for Rating Alternatives and for the Selection of the Preferred Alternative:* The alternative planning processes and languages sets described to address the central issues have been analyzed and evaluated in this statement. The NFMA established bounds within which to develop the regulations. It required that a Committee of Scientists assist in the development of guidelines and procedurs. By utilizing this prescribed method, including provisions for public particiaption, the range of alternatives for consideration narrowed to the preferred alternative proposed for adoption. This set of regulations appears in the Appendix of this FEIS.

*Meeting Congressional Intent on NFMA:* NFMA presents congressional policy concerning the balance between protection of the environment and the need to provide adequate supplies of wood products. With this policy direction, Congress endorsed the concept that silvicultural prescription should be determined by the professional resource manager, not the legislator. Congress expects, however, that the regulations called for in NFMA will provide better controls on management planning and decisionmaking and that these controls will be influenced by interdisciplinary planning, and substantial public participation throughout the planning process.

The August 31, 1978 draft regulations met the intent of NFMA, but provided more discretion in the selection and use of guidelines and standards governing management activities. The Preferred Alternative represents a sensible compromise between discretionary management and management by inflexible rules. The alternative retains the option for more explicit management controls and direction if future management under the proposed regulations fails to meet congressional expectations.

*Basis in Technical and Scientific Principles:* There are substantial differences of opinion on many of the issues for which direction is provided in the alternative regulations. Congress, recognizing these differences, directed the Secretary to appoint a Committee of Scientists for advice in the preparation of these regulations. The interdisciplinary team that prepared this statement believes that the Committee of Scientists' version of the regulations represents the state of the art in technical and scientific areas. In most instances, the Preferred Alternative is based upon the Committee's technical and scientific recommendations. The August 31, 1978 draft, and the Environmental and Timber groups' proposals do not contain the same level of prescribed precision as the other two versions because they deal only with two specific issues. There was wide variation in the public comments on the August draft and the DEIS. Issues raised by the public were also reviewed by the Committee of Scientists.

It is possible, as the state of the art evolves in such areas as resource valuation, diversity measurements, etc., that direction will have to be modified to accommodate new techniques and approaches.

*Acceptability to the Public:* In evaluating public reaction to alternative regulations, more than 7,000 separate comments, as well as the texts of specific proposals from the general public, Environmental, Timber, and other Industrial groups, were reviewed (5323 on the first draft, 1581 on the DEIS). In addition, the Committee of Scientists' report proposals were examined in depth. All of the above information was used in alternative evaluation. While none of the alternative regulation sets will be acceptable to all interested groups, the interdisciplinary team concludes that the Preferred Alternative incorporates the most acceptable version to all publics. This version describes in more specific language the actions to be taken by the Forest Service during the land management planning process. This factor, coupled with the degree of environmental protection it affords, weighed heavily in identifying Alternative 8 as the Preferred Alternative.

*Achievement of RPA Program Goals*

*Amenities:* Public concern about environmental protection helped secure passage of the National Forest Management Act. The alternatives considered ranged from considerable flexibility at the national forest level in the August 31, 1978 version, to a more detailed approach to environmental protection proposed by the Committee of Scientists. Some of the key elements between alternatives were size of openings, riparian area protection, determination of lands not suited for timber management, diversity, public participation, coordination with other planning units and interdisciplinary teams.

The August 31, 1978 regulations provided considerable discretion in riparian area protection, and provisions for diversity. Discretion is also provided in the Preferred Alternative, though some limits are set. The detail and clarity of requirements mandated in the Preferred Alternative should, however, result in more complete, balanced consideration for environmental protection during the land management planning process, and therefore, more adequately provide for the supply of amenities than other alternatives.

*Timber Supply and Other Commodities:* Many of the provisions of NFMA may directly effect some RPA program goals such as timber supply; others such as diversity and riparian provisions can indirectly effect protection and/or production costs of most commodity goals.

Some issues assessed affect RPA timber and other commodity goals in different ways. For example, the riparian issue can affect the land base available for grazing domestic livestock and for producing timber. The lands not suited issue can affect the land base available for timber harvesting. Others, the size of openings for example, may influence wildlife habitat, or the conversion of non-commercial forest lands to production of wildlife and domestic livestock forage. Opening size affects the cost of harvesting timber because marginal timber from smaller areas may be excluded from harvesting. Thus the supply could be reduced, incurring higher prices.

The August 31, 1978, version provided more discretion to the land manager in selection and use of guidelines and criteria that affect the supply of goods and services that flow from the National Forest System lands. Most of the other alternatives reduce that discretion and consequently are expected to reduce commodity supply to varying degrees or increase the cost of maintaining or increasing the supply of these affected resources. Overall RPA Program commodity goals can be achieved with the Preferred Alternative through more intensive management of the National Forest System.

*Conformity with Executive Order No. 12044:* Executive Order No. 12044 directs that regulations prepared be as simple and as clear as possible. An evaluation of alternative language sets for regulations display a considerable range from simple to complex descriptions of direction and intent. The August 31, 1978 version of the regulations reflects a rather informal process-oriented approach while other versions, such as the Committee of Scientists and the Preferred Alternative are more explicit.

While the President's Executive Order prescribes simplicity and a reduction in implementation and economic burdens,

it also requires the agency to be responsive to public comment. The Interdisciplinary team found these two directives in conflict because the public, through their comments, addressed the need for regulations to provide more specific and prescriptive language.

The interdisciplinary team carrying out this evaluation felt that the need to respond to public comment was an important factor. As a result, all alternatives tend to be slightly inflationary because of their overall tendency to increase costs to manage the National Forest System.

*Accountability:* The regulations must clearly state who is responsible for certain actions, the nature and extent of responsibilities delegated, and clearly describe the appeal mechanisms in terms of substance and procedures.

Relative to the other alternatives, the August 31, 1978 draft regulations are considered to be weak in this respect. The principal reasons for this low ranking are:

1. August 31, 1978 draft implies that a great many decisions will be made during the regional planning process, but does not specify what the regional plan is, or how it will be done, or who is responsible for it.

2. Draft does not clearly define the role and responsibility of the interdisciplinary team.

3. With the exception of the regional planning shortcoming, the appeal procedures are adequate.

The Environmental Groups' proposal addresses accountability in the departures issue. Both the Chief and Secretary are identified as responsible for approving departures. There is, therefore, a high degree of accoutability for this issue. The Timber Groups' alternative does not alter the draft with respect to this point. The Committee of Scientists' proposals add specifications and requirements for regional planning, interdisciplinary approach and clarifying details to the appeals process. This alternative is considered to possess a higher degree of accountability than does the August 31, 1978 draft or the Timber Groups' proposals. The public comments stressed the need for more details on regional planning and the interdisciplinary approach. Suggested revisions were similar to those of the Committee of Scientists' alternative. The Preferred Alternative has incorporated the concerns voiced by the Committee of Scientists and the public comments.

*Capability to Implement:* The evaluation of feasibility is related to personnel and skill requirements, and the time required to undertake and complete planning actions specified. Neither the August 31, 1978 draft regulatins nor the Timber Groups' proposal would significantly affect either of these factors. The Environmental Groups' alternative would require more detailed economic evaluation for lands not suitable for timber harvest, and a more detailed, time consuming procedure for departures. The Environmental Groups' alternative is, therefore, considered to be somewhat more demanding than the August 31, 1978 draft and Timber Groups' proposal. The Committee of Scientists alternative is quite demanding as a result of suggested revisions to the interdisciplinary team approach, economic analysis requirements, diversity provisions, public participation requirements, coordination, and required riparian areas. Public comments indicate the need for more expanded interdisciplinary teams, greater public participation and coordination, more detailed economic analysis, and longer time limits for public review of plans. The public comments on the first draft and the DEIS were somewhat less demanding than the Committee of Scientists' alternative, but more demanding than the August 31, 1978 environmental or timber groups' proposals. Since the Preferred Alternative largely reflects the Committee of Scientists' proposals, the feasibility of this alternative is considered to be the same as for the Committee of Scientists alternative.

*Flexibility:* Flexibility is related to the degree to which regulaitions permit site-specific management discretion and allowance for exceptional circumstances. Both the August 31, 1978 draft and the Timber Groups' alternatives are considered to be highly flexible, especially with regard to openings created by cutting, biological growth minimums for timber, and protection standards for streams and lakes. The Environmental Groups' alternative is highly inflexible with regard to minimum biological growth standards. The Committee of Scientists proposal would result in somewhat less flexibility than the draft, primarily as a result of the riparian area requirements. The Committee's proposals to determine size opening standards at the regional level are identical to those of the August 31, 1978 draft. Many public comments were directed toward site specific concerns and were, therefore, highly inflexible when considered from the viewpoint of national regulaions. Alternatives 6, 7, and 8 are based primarily upon the revisions suggested by the Committee of Scientists and the concerns voiced throughout the public comments. While the Preferred Alterntive does not include a national biological growth minimum for timber harvest, it does include a number of detailed standards including maximum size for openings created by cutting; riparian protection area more detailed requirements for coordination, public participation, diversity and forest type conversions; wilderness management and roadless area evaluation. As a result of these requirements, the Preferred Alternative provides compromise flexibility.

## VII. Consultation with others

Opportunities for public involvement in the development of the regulations have been made available beginning with the enactment of the NFMA in 1976. The Work Plan Outline was made available on March 5, 1977. It identified the tasks to be completed in the development of the regulations including the opportunity for public participation in the effort.

A Committee of Scientists (see Appendix D) was appointed by the Secretary of Agriculture in response to Section 6(h) of the Act, which charged the Committee to "provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted." However, the Secretary broadened this charter to include advice and counsel on all parts of Section 6 of the Act. The Committee met many times in various locations (see Appendix C). It's work was conducted in three phases. The first was to work with Forest Service personnel to consider and prepare language for the regulations. This phase terminated upon publication of the draft regulations which appeared in the August 31, 1978 Federal Register. The second phase of the Committee's work was to evaluate the draft regulations and to prepare a report to the Secretary. This phase was completed when the Committee submitted its report to the Secretary on February 22, 1979. The last phase was completed with the submission of the Committee's report on the DEIS Prefered Alternative Regulations. The first report, together with the Committee's proposed regulations, is the basis for the Committee of Scientists Alternative discussed in the FEIS. The second report was considered as part of the entire public comment record on the DEIS.

The public, (State, local officials, interest group representatives and others) was given the opportunity to attend the Committee of Scientists meetings, and frequently participated in the discussions. The complete minutes of all these meetings are available for

review in the Forest Service Headquarters, Land Management Planning, Room 4021, South Agriculture Building, 12th and Independence Ave. S.W., Washington, D.C., and in the Library of Congress, and in Forest Service Regional Office headquarters.

The public was also given the opportunity to attend other meetings convened especially to obtain comments on the August 31, 1978 draft regulations. The proceedings of those meetings were published and are also available for review at Forest Service headquarters. The Forest Service received 737 letters containing 5,373 identifiable comments concerning the August 31, 1978 draft regulations. These letters and comments are available for review in Forest Service Headquarters along with the report and its summary of the public comment analysis. As a consequence of this public involvement, it was decided to revise the regulations and re-issue them accompanied by a draft environmental impact statement. The comments, along with the suggestions received through meetings open to the public, the work of the Committee of Scientists, and the technical reports prepared by the Forest Service staff, formed the basis of the alternatives discussed in the DEIS which was published in the Federal Register, Vol. 40, No. 88, May 4, 1979.

Since publication of the DEIS, another 245 letters and responses have been received containing 1581 distinct comments. All have been analyzed and considered, including the Committee of Scientists' comments on the DEIS Preferred Alternative, during the preparation of the FEIS and the final regulations identified in the FEIS as the selected Alternative.

All commentors on the DEIS will be furnished a copy of the EIS.

## Summary of Public Comment Received on the DEIS Dated May 4, 1979

Appendix "A" contains the list of individuals and organizations who submitted comments on the DEIS and related material which accompanied it in the Federal Register, May 4, 1979. There were 245 submissions which contained 1581 distinct comments. Of this total, about 1400 comments were issue oriented, that is, were either specific to the DEIS Draft Regulations or to the issues presented, discussed, and evaluated in the DEIS. The distribution of these comments by source, by section of the regulations (preferred alternative in the DEIS), and by other categories is shown in the following table:

**Distribution of Public Comment on the DEIS and Related Material by Source and Comment Category**

| Comment category | Type of respondent | | | | Total |
|---|---|---|---|---|---|
| | Individual | Organization | Government agency | Forest Service | |
| Regulations: | | | | | |
| 219.1 Purpose | 4 | 13 | 8 | 6 | 31 |
| 219.2 Scope and applicability | 2 | 3 | 1 | 1 | 7 |
| 219.3 Definitions | 9 | 36 | 7 | 33 | 85 |
| 219.4 Planning levels | 6 | 26 | 6 | 29 | 67 |
| 219.5 Regional and forest planning process | 24 | 62 | 9 | 66 | 161 |
| 219.6 Interdisciplinary approach | 9 | 16 | 4 | 11 | 40 |
| 219.7 Public participation | 58 | 45 | 11 | 11 | 125 |
| 219.8 Coordination of public planning efforts | 4 | 12 | 7 | 7 | 30 |
| 219.9 Regional planning procedure | 5 | 14 | 7 | 29 | 55 |
| 219.10 Regional planning action | 14 | 39 | 11 | 18 | 82 |
| 219.11 Forest planning procedure | 15 | 28 | 2 | 33 | 78 |
| 219.12 Forest planning actions | 76 | 181 | 29 | 60 | 366 |
| 219.13 Management standards and guidelines | 102 | 129 | 31 | 41 | 303 |
| 219.14 Research | 1 | 1 | 2 | 0 | 4 |
| 219.15 Revision of regulations | 1 | 4 | 3 | 0 | 8 |
| 219.16 Transition period | 0 | 4 | 0 | 0 | 4 |
| Subtotal regulation | 330 | 613 | 136 | 385 | 1,448 |
| Other: | | | | | |
| Introductory material in FEDERAL REGISTER of May 4, 1979 | 0 | 2 | 0 | 0 | 2 |
| DEIS | 8 | 69 | 14 | 0 | 91 |
| Committee of Scientists report | 1 | 5 | 1 | 0 | 7 |
| Committee of Scientists proposed regulations | 1 | 6 | 0 | 0 | 7 |
| No section | 16 | 6 | 4 | 2 | 29 |
| Subtotal other | 26 | 88 | 19 | 2 | 135 |
| Grand total | 356 | 701 | 157 | 367 | 1,581 |

The majority of comments received were in letter form. Most of the comments were specific and succinct, and addressed only a few concerns, but several were, by comparison lengthy, detailed, and complex. All were reviewed, analyzed, and considered in the preparation of the FEIS.

All comments received are available for review at Forest Service Headquarters in Washington, D.C. Since the total submission is so voluminous, it is impractical to reproduce it in the FEIS. The substantive comment is, therefore, presented below in summary form, organized by section corresponding to the organization of the proposed regulations, i.e. 219.1, 219.2, etc.

## Summary of Comments by Section

### *219.1 Purpose*

Comments relating to this section of the draft regulations concentrated on the need to include cultural as well as natural resources and for giving consideration to renewable as well as non-renewable resources. A number of commenters praised planning coordination requirements in this section.

### *219.2 Scope and Applicability*

It was suggested that the term "special area authorities" be defined.

### *219.3 Definitions*

Almost every term received comment; however, the majority of response dealt with the differentiation between "guidelines" and "standards"; clarification of "diversity"; and the definition of "capability". Several respondents questioned the definition of "Responsible Forest Service official".

### *219.4 Planning Levels*

The majority of comments centered on the process for developing and selecting the RPA Program and the relationships between the Program and the various levels of planning. The thrust of most comments was that the draft regulations should more clearly define these relationships.

### *219.5 Planning Criteria*

Numerous comments were received concerning the relationship between the interdisciplinary team and "the responsible Forest Service official." The need to clarify the definition of "responsible official" was noted. Many comments dealt with specific criteria listed in the draft regulations:

Economic analysis criteria—Many commentors pointed out that the economic analysis criteria should be established as soon as possible.

Data inventory—Most of these comments centered around the determination of adequacy of the data, data collection procedures, compatability requirements to obtain uniformity among forests, and the need to include criteria for coordination and cooperation with other agencies for data collection, storage, and evaluation.

Analysis of the management situation—it was suggested that the term "society" be clarified. Numerous commenters pointed out the problems associated with estimating "demand".

Formulation of alternatives. The required "No Change" alternative was considered meaningless by most commenters. Concern about using cost effectiveness as a criteria for formulating alternatives was also expressed.

Estimated effects of alternatives—Most comments were related to problems inherent in estimating benefits and costs. Suggestions were made for additional effects to be measured such as the impact of the plan on the exploration and development of mineral resources. A number of commenters suggested that unconstrained single resource outputs (resource outputs ignoring other multiple-use consideration) and multiple-use outputs of each alternative should be compared.

*219.6 Interdisciplinary Approach*

Responses on this section of the regulations emphasized the need to establish operating procedures, and to spell out more fully the authority and the function of the Interdisciplinary Team, including how involvement of state and local agencies will be imcorporated. Other comments dealt with the need to add other disciplines and private citizens to the team. Some commenters suggested that private sector contract consulting should be emphasized in the regulations.

*219.7 Public participation.*

The majority of comments on this section of the draft regulations dealt with the proposed changes in the appeals process. Almost all commenters disagreed with these proposed changes. Numerous suggestions were received on methods of public involvement and notification. The use of the term "to the extent possible" was questioned. Most comments suggested that this was inappropriate and should be eliminated in this context. Many commenters felt that 15 days public notice for public participation activities for forest level planning activities was inadequate.

*219.8 Coordination of Public Planning Efforts*

The majority of comments expressed agreement with this section of the draft regulations; however, some commenters did point out that state and local coordination in the eastern United States would be extremely difficult and time consuming because of the greater number of state and local agencies.

*219.9 Regional Planning Procedure*

Several commenters suggested that the proposed regulations do not adequately deal with visual resources or unquantified environmental amenities. Other comments discussed potential problems associated with record of decision, the transition period between forest plans developed prior to regional plans, and the standards for determining "signficiant deviation" between regional plans and the national program funding or implementation.

*219.10 Criteria for Regional Planning Actions*

Many commenters noted that the list of management concerns did not include wilderness considerations, meeting the RPA program, or visual or mineral resource concerns. It was suggested that these be included. A number of commenters advocated the establishment of a definite minimum per acre growth figure for timber harvesting. A minimum of fifty cubic feet per acre per year was mentioned most often. Response to the clearcut size issue was mixed. In addition to pro and con comments regarding the level (national or regional) at which size limits should be set, there were a number of comments regarding the actual size limits themselves. Several comments stated that the draft regulations implied that little or no new data would be gathered and asked for clarfication of this point. There was some confusion as to whether or not regional planning came before forest planning.

*219.11 Forest Planning Procedures*

Several commenters expressed the opinion that the "forest plan content" should require detailed maps of the planning area including existing resources and existing and planned activities. Comments on documentation requirements indicated a concern that flexibility of line officers would be seriously and adversely effected by having to document and justify every action. The use of the term "significant change" in the discussion of forest plan amendments and revisions was questioned by several commenters. It was suggested that additional clarfiying language be included for this point.

*219.12 Criteria for Forest Planning Actions*

Approximately 20 percent of all comments received dealt with this section of the proposed regulations. Most of these were directed to two issues: "lands not suitable for timber" and "departures." Many commenters recommended that a national minimum biological growth standard be established to use in the determination of lands suitable for timber. It was suggested that 50 cubic feet per acre per year might be an appropriate standard. Others were concerned that timber harvesting on steep slopes was not specifically prohibited. Many commenters objected to the provision that lands would be classified as unsuitable if, based on multiple-use objectives, the land was suitable for resource uses that would preclude timber production. Numerous commenters recommended that the regulations clearly state that benefits must exceed costs in order for lands to be suitable for timber production. Several comments raised the question of restocking of timber lands. The proposed regulations state that lands will be considered suitable for timber production if there is "assurance that such lands can be adequately restocked within 5 years." There was some speculation as to the exact meaning of this provision. It was suggested that this lanuage be clarified. It was recommended that "direct benefits" not be measured in terms of "future stumpage prices", but rather, benefits should be net receipts on returns to the treasury.

The treatment of the departures issue was sharply criticized. It was suggested repeatedly that the justifications shown for departures were inappropriate and perhaps illegal. Most commenters asserted that departures may be considered *only* to the meet multiple-use objectives of a plan.

Some commenters on the wilderness planning provisions of this section suggested that the exclusion of RARE II non-wilderness lands from the first forest plans was inappropriate. Some felt that there was a need to specifically consider areas which were not inventoried during RARE II. There were a number of comments criticizing the absence of mineral exploration and development considerations from this section. A number of commenters expressed their agreement and support of the proposed regulations.

Comments on the fish and wildlife provisions of this section were directed mainly toward questions regarding indicator species. Many commenters suggested that the language be clarfied to insure that invertebrates may be used as indicator species. A number of respondents agreed with the provision for using state lists for threatened and endangered plants and animal species as a basis for identifying indicator species.

Most of the comments received regarding mineral exploration and

development were sharply critical of the proposed regulations. The Major criticism was that the proposed rules did not adequately insure that these considerations would be given appropriate weighting in the actual decision process. Similar criticisms were made concerning the treatment of rangeland resources, recreation, soil and water, and visual resources.

*219.13 Management Standards and Guidelines*

Approximately 20 percent of all comments received dealt with this section of the proposed regulations. Most of the comments on this section were concerned with two issues: Maximum size limits for tree openings and riparian protection strips. The large number of comments received on these issues indicate that they continue to be the most controversial issues raised by the proposed regulations.

The comments on clearcut size are about evenly divided between those who oppose the national limits established in the proposed regulations and those who are in favor of these limits. The most frequent criticism raised by those who opposed the national limits was that there was little or no justification established for the 100-, 60-, and 40-acre limits. This was considered to be a major omission, especially in view of the Committee of Scientists' recommendation against setting national limits of any kind. Almost all of those opposed to these national size limits suggested that the Committee of Scientists' recommendations be adopted in the final regulations. A number of commenters opposed the national limits on the grounds that the maximum sizes allowed were too large. It was frequently suggested that maximum size for *all* areas be set as 40 acres or smaller. Several commenters were concerned that if the size limits were set nationally, then all clearcuts would tend to be the maximum size allowed. Some asserted that the 40-acre size limit for the east and south would result in greatly reduced future timber volumes available for sale. The 100-acre size limit for the Alaska region received severe criticism. It was suggested that the limits should be at least 160 acres for Alaska. It should be reiterated that public comment on this issue was rather evenly divided between those who opposed the draft language and those who were in agreement. Generally, those who expressed agreement gave their unqualified support and frequently praised the treatment of this issue in the proposed regulations.

The types of comments received concerning the riparian protection strips were similar to those dealing with the clearcut size issue. That is, comments were about equally divided pro and con, and most were either strongly in favor or strongly opposed. Several commenters expressed the opinion that the 100 foot strip could be interpreted as a maximum distance and suggested that the language be clarified to clearly indicate that it was not the maximum. It was suggested that the riparian buffers should include seasonal as well as perennial streams.

Numerous commenters responded to the diversity provisions of this section. While most commenters appeared to agree with the intent of this provision, some concern was expressed regarding the use of the term "desirable" plant and animal species. The meaning of the word "desirable" in this context was questioned. Several commenters who appeared to agree with the diversity provisions also warned that the language used might result in a substantial additional work burden for the Forest Service as well as limiting management flexibility. There were many comments suggesting that the diversity provisions should be strengthened.

Other comments included suggestions to require consideration of fuel and energy requirements in the planning process, rangeland and range use, and timber removal on steep slopes. The 10-year maximum time for re-establishing vegetative cover disturbed by temporary roads was considered to be too lengthly.

*219.14 Research*

There were relatively few comments on this section of the regulations. Several commenters expressed concern the regulations do not specifically identify basic research as a valid and equal use of the NFS.

*219.15 Revision of Regulations*

The recommendation was made that all revisions to the regulations be accompanied by an Environmental Impact Statement. It was agreed that the 5-year review interval of the regulations was appropriate.

*219.16 Transition Period*

There were few comments on this section of the regulations. One commenter suggested that clarifying language be added to further explain the process to be used during the transition period.

VIII. Appendix Index

Appendix A: List of Commentors of the August 31, 1978 Draft Regulations published in the Federal Register, Vol. 43, No. 170, and on the DEIS and Preferred Alternative (Regulations) published in the Federal Register, Vol. 44, No. 88, May 4, 1979.

Appendix B: Planning Process Systems Considered.

Appendix C: Dates and locations of Committee Meetings, and other Public Meetings.

Appendix D: Names and Affiliations of the Committee of Scientists appointed by the Secretary as required under NFMA, Section 6(h).

Appendix E: Supplementary Final Report of the Committee of Scientists.

Appendix F: Table of Contents and index for final regulations. For purposes of the Federal Register the regulations follow the Appendix.

Appendix A

Everyone who commented on the August draft received a copy of the DEIS and relate material. The attached list indicates those who commented on the August 31, 1978 draft and the DEIS and related material. The latter group, those who commented or otherwise requested material in the May 4, 1979 Federal Register, are indicated by an asterisk.

Federal/State/Local Government

*Federal Government*

Agriculture, U.S. Dept. of

*Soil Conservation Soil, Box 2007, Albuquerque, NM 87103.

*Soil Conservation Service, 304 N. 8th Street, Room 345, Boise, ID 83702.

Commerce, U.S. Dept. of

National Oceanic & Atmospheric Adm., National Marine Fisheries Service, F7, Washington, D.C. 20235

National Oceanic & Atmospheric Admin., Northeast Region, Fisheries Management Operations Br., Gloucester, MA 01930.

*Council on Environmental Quality, 722 Jackson Place NW., Washington, D.C. 20006.

Environmental Protection Agency, Office of Federal Activities (A-104), Washington, D.C. 20460.

Interior, U.S. Dept. of the

*Office of the Secretary

Bureau of Land Management

*Bureau of Mines

Bureau of Reclamation

Office of Environmental Project Review

U.S. Fish & Wildlife Service

HCRS, Federal Lands Planning

Heritage Conservation & Recreation Service, Washington, D.C. 20243

*Bureau of Land Management, 136 E. South Temple, Salt Lake City, UT 84111.

Transportation, U.S. Dept of

Federal Highway Administration, Washington, D.C. 20590.

Honorable Dale Bumpers, United States Senate, Washington, D.C. 20510.

Honorable Thomas S. Foley, House of Representatives, Washington, D.C. 20515.
Honorable Jim Weaver, House of Representatives, Washington, D.C. 20515.
The Library of Congress, Environment and Natural Resources, Congressional Research Service, Washington, D.C. 20540.
Smithsonian Institute Bldg., Wilson Center (Samuel Hays), Washington, D.C. 20560.

*State and Local Government*

Alaska, State of

*Office of the Governor, Division of Policy Development & Planning, Pouch AD, Juneau, AK 99811.

Arizona, State of

State Land Dept., Conservation Division, 1624 W. Adams, Phoenix, AZ 85007.

Colorado, State of

Dept. of Natural Resources, 1313 Sherman St., Rm 718, Denver, CO 80203.
*Dept. of Natural Resources, Division of Wildlife, 6060 Broadway, Denver, CO 80216.

Florida, State of

Florida Game & Fresh Water Fish Comm., 620 S. Meridian Street, Tallahassee, FL 32304.

Georgia, State of

*Department of Natural Resources, 270 Washington St., SW, Atlanta, GA 30334.

Idaho, State of

Dept. of Fish and Game, 600 S. Walnut Street, Boise, ID 83707.

Louisiana, State of

Wildlife and Fisheries Comm., 400 Royal Street, New Orleans, LA 70130.

Michigan, State of

Chamber of Commerce, Natural Resources Programs, 501 S. Capitol Ave., Suite 500, Lansing, MI 48933.

Montana, State of

Dept. of Fish and Game, Wildlife Division, Helena, MT 59601.

Nevada, State of

Governor's Office of Planning Coordination, Capitol Complex, Carson City, NV 89710.
Dept. of Fish and Game, P.O. Box 10678, Reno, NV 89510.

New Mexico, State of

*Dept. of Natural Resources, Santa Fe, NM 87503.

Oregon, State of

Dept. of Forestry, Office of State Forester, 2600 State Street, Salem, OR 97310.

Utah, State of

*Office of the Governor, Salt Lake City, UT 84114.
State Planning Coordinator, 118 State Capitol, Salt Lake City, UT 84114.

Washington, State of

Office of the Governor, Legislative Bldg., Olympia, WA 98504.
Dept. of Game, Dept. of Natural Resources, 600 North Capitol Way, Olympia, WA 98504.
Buncombe County Soil & Water Conservation District, P.O. Box 2836, Asheville, NC 28802.
Council of State Governments, P.O. Box 11910, Lexington, KY 40578.
Denver Water Dept., 1600 W. 12th Avenue, Denver, CO 80254.
East Central Planning & Dev. Region, Chief/ Comprehensive Studies Div., P.O. Box 930, Saginaw, MI 48606.
Elko County Manger, Elko County Courthouse, Elko, NV 89801.
Western States Legislator, Forestry Task Force, 1107 9th St., Suite 614, Sacramento, CA 95814.
Barbara Tucker, State of Connecticut Senate, State Capitol, Hartford, CT 06615.
Senator Bob Lessard, Senate District 3, State Capitol, Rm 24H, St. Paul, MN 55155.
Senator Ivan M. Matheson, Utah State Senate, Salt Lake City, UT 84114.

*Organizations*

A. C. Dutton Lumber Corp. (Arthur D. Dutton), 12 Raymond Avenue, Poughkeepsie, NY 12603
Alaska Loggers Association (Donald A. Bell), 111 Stedman, Suite 200, Ketchikan, AK 99901.
Alaska Lumber & Pulp Co., Inc. (J. A. Rynearson), P.O. Box 1050, Sitka, AK 99835.
Alaska Women in Timber (Helen Finney), 111 Stedman Street, Ketchikan, AK 99901.
Allied Timber Company (Don Shalope), 2300 Southwest 1st Ave., Portland, OR 97201.
Alpine Lakes Protection Society (Donald Parks), 3127 181st Ave., NE, Redmond, WA 98052.
*AMAX (Stanley Dempsey), 13949 W. Colfax Ave., Bldg. #1, Golden, CO 80401.
American Forestry Association (Richard Pardo), 1319 18th St., NW, Washington, D.C. 20036.
American Hardwood Industries, Inc. (Charles J. Hamlin), Sixth Avenue, Union City, PA 16438.
*American Indian Law Center, Inc. (Vicky Santana), 1117 Stanford, NE, Albuquerque, NM 87196.
American Petroleum Institute (C. T. Sawyer & Wilson M. Laird), 2101 L Street, NW, Washington, D.C. 20037.
American Plywood Association (M. J. Kuehne), P.O. Box 2277, Tacoma, WA 98401.
*Animal Protection Institute of America (Belton Mouras & Richard Spotts), 5894 South Land Park Drive, P.O. Box 22505, Sacramento, CA 95822.
Appalachian Hardwood Management, Inc. (James L. Grundy), P.O. Box 427, High Point, NC 27261.
Appalachian Mountain Club (Sara H. Surgenor), 5 Joy Street, Boston, MA 02108.
Arcata Redwood (Terence L. Ross), P.O. Box 218, Arcata, CA 95521.
Arroyo Grande Resource Conserv. Dist. (William L. Denneen), P.O. Box 548, Arroyo Grande, CA 93420.
Aspen Wilderness Workshop, Inc. (Jay M. Caudill), Box 9025, Aspen, CO 81611.
*Atlantic Richfield Company (J. R. Mitchell & Clarie Mosley), 555 17th Street, Denver, CO 81611.
Basin Electric Power Corp. (Clarence A. Bind), 1717 E. Interstate Ave., Bismark, ND 58501.
Bell-Gates Lumber Corp. (Jerrol A. Gates), Jeffersonville, VT 05464.
Boating Industry Association (Jeff W. Napier), 1 N. Michigan Avenue, Chicago, IL 60611.
Bohemia, Inc., P.O. Box 2027, Grass Valley, CA 95945.
Booker Associates, Inc. (Peter F. Jackson), 343 Waller Avenue, Lexington, KY 40504.
Boyd Lumber Corp. (Butch Koykka), P.O. Box 112, Sedro Woolley, WA 98284.
Brady, Blackwell Associates, P.C. (Larry Resentreter), 520 E. 18th, Cheyenne, WY 82001.
Brookings Plywood Corporation (Robert L. Rogers), P.O. Box 820, Brookings, OR 97415.
Brown-Bledsoe Lumber Co. (John C. Baskerville, Jr.), P.O. Box 10098, Greensboro, NC 27404.
Brunswick Pulp Land Co. (C. H. Martin), P.O. Box 860, Brunswick, GA 31520.
Burlington Northern (S. G. Merryman), 650 Central Bldg., Seattle, WA 98104.
Burrill Lumber Co. (Daniel E. Goltz), P.O. Box 220, Medford, OR 97501.
Buse Timber & Sales, Inc. (Ron Smith), 3812 28th Place, N.E., Marysville, WA 98270.
California Assoc. of 4WD Clubs, Inc. (Ed Dunkley), P.O. Box 669, Sacramento, CA 95803.
California Trout (Herbert L. Joseph), 1516 Napa Street, Vallejo, CA 94590.
Canal Wood Corporation (N. V. Chamberlain), P.O. Box 308, Chester, SC 29706.
*Cascade Holistic Economic Consultants (Randal O'Toole), P.O. Box 3479, Eugene, OR 97403.
Central Cascades Conservation Council (Tony George), P.O. Box 731, Salem, OR 97308.
Chaco Energy Co. (J. W. Deichmann), P.O. Box 1088, Albuquerque, NM 87103.
Champion International Corp. (Gordon Crupper), P.O. Box 1208, Salmon, ID 83467.
Champion Timberlands (L. Heist), 1 Landmark Square, Stanford, CT 06921. (Richard A. Sirken), 405 Norway Street, Norway, MI 49870.
Chemeketans (W. B. Eubanks), 360½ State Street, Salem, OR 97301.
Chevron, USA, Inc. (L. C. Soileau III), 575 Market Street, San Francisco, CA 94105.
*Cities Service Company (Catherine Perman), Box 300, Tulsa, OK 74102.
Citizen's Committee to Save Our Public Lands (Ellen Drell), P.O. Box 1471, Willits, CA 95490.
Citizens for N. Idaho Wilderness (John Adams), Route 2, Culdesac, ID 83524.
Clearwater Forest Industries (Robert H. Krogh), P.O. Box 340, Kooskia, ID 83539.
Colorado Mining Association (David R. Cole), 330 Denver Hilton Office Bldg., 1515 Cleveland Place, Denver, CO 80202.
Columbia Audubon Society (Charles H. Eastman), 4805 Barber Street, Columbia, SC 29203.
Consolidated Papers, Inc. (Dan Meyer), P.O. Box 50, Wisconsin Rapids, WI 54494.
Continental Forest Industries (J. O. Cantrell), P.O. Box 8969, Savannah, GA 31402.
Day Mines, Inc. (Warren A. Cohen), P.O. Box 1010, Wallace, ID 83873.
Defenders of Wildlife (Sara Polenick), 6101 Griffin Lane, Medford, OR 97501.
*Designing With Nature (R. L. Elkum), Box 527, Moose Lake, MN 55767.

Diamond Internatonal Corp. (Roger A. Race), New York Woodlands Dept., Plattsburgh, NY 12901.
DuPage Audubon Society (Lisa Zebrowski), 27 W. 722 Elm Drive, West Chicago, IL 60185.
*Eagle Valley Environmentalists (Gilbert Walter), P.O. Box 155, Apple River, IL 61001.
East Central Idaho Planning & Development Assn., P.O. Box 330, Rexburg, ID 83440.
*Ecology Action for Rhode Island (Elizabeth Schiller), 286 Thayer Street, Providence, RI 02906.
Edward Hines Lumber Co.
(Gilbert W. Zieman & Jane E. Booth), 200 South Michigan Avenue, Chicago, IL 60604.
*(Paul F. Ehinger & William F. Berry), 1500 Valley River Dr., Suite 240, Eugene, OR 97401.
*(Jack Heaston), P.O. Box 227, John Day, OR 97845.
(John J. Mahon), P.O. Box 808, Saratoga, WY 82331.
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## Appendix B

Planning process or system alternatives which are considered are described below. For a more complete discussion, the reader is referred to the minutes of the May 24–26, 1977 Committee of Scientists meeting.

1. Incrementalism: policy of decisionmaking as variations on the past. The land manager views public policy and decisionmaking as a continuation of the past government activities with only incremental modifications. This process is based on the successive comparison of a limited array of policies or decision alternative.

2. Rationalism: policy or decisionmaking as efficient goal achievement. A rational policy or decision is one that is correctly designed to maximize or minimize net value achievement. Policy and decisionmaking is approached through means-ends analysis. First, the desired ends are determined, then the alternative means to achieve them are designed.

3. Mixed Scanning: policy and decisionmaking as variations on the past in line with modified efficient goal achievement. This process is a mixture of Incrementalism and Rationalism. It attempts to limit the details and explores longer run alternatives.

4. System Theory: policy and decisions as rational system output. This theory is an extension of the scientific method. The problem is defined, objective set, alternatives developed and evaluated, and a decision made as to the preferred course of action. A mechanism of monitoring and updating is needed.

5. Group Theory: policy and decisionmaking as a group equilibrium. This is based on the belief that interaction among groups is the central fact of political decisiomaking. Groups struggle: policy and decisions result when equilibrium between groups is reached.

6. Game theory: policy as rational choice in competitive situations. This is the making of rational decisions in situations where participants have choices to make and the outcome depends on the choices made by each of them. There is no independently best choice. This theory provides a way of thinking clearly about policy or decisions choices in conflict situations.

7. Institutionalism Theory: policy and decisionmaking as inherant institutional activity. The activities of individuals and groups are generally directed toward governmental institutions. Public policy and decisions are authoritatively determined, implemented, and enforced by governmental institutions.

8. Elite Theory: policy or decision as the preference of an elite. Elite shape mass opinion on policy or decision questions more than do the masses because the latter are apethetic and ill-informed. In other words, policies flow from elites to the masses: they do not arise from the masses.

9. Anti-Planning: policy and decisionmaking as output of an individualistic decisionmaking. This is a common form of planning. A system or problem exists which needs to be managed. The manager studies aspects of the problem he deems important, utilizes data from staff, and decides what to do.

Major problems outside the planning realm itself greatly constrain the type of planning procedure which can be used. Two concepts of considerable importance are "paradigm" and "people". A "paradigm" is a set of conceptual constructs which govern the viewpoints of people involved in a planning process. The people are referred to as "hierarchists," "individualists," and "mutualists," who use different paradigms, respective "one way casual," "random process," and "mutual casual." These notions were also considered and used as part of the conceptual basis for designing the planning process.

## Appendix C

Committee of Scientists and other Meeting Dates and Locations:

May 24–26, 1977—Washington, D.C.
June 19–21, 1977—Boise, Idaho
July 27–28, 1977—Juneau, Alaska
August 29–30, 1977—Denver, Colorado
September 21–23, 1977—Minneapolis, Minnesota
October 27–28, 1977—San Francisco, California
December 1–2, 1977—Atlanta, Georgia
January 16–18, 1978—Phoenix, Arizona
February 23–24, 1978—Biloxi, Mississippi
March 29–30, 1978—Dallas, Texas
April 17–18, 1978—Washington, D.C.
July 14, 1978—Washington, D.C.
September 28–29, 1978—Denver, Colorado
November 1–2, 1978—Seattle, Washington
December 7–8, 1978—Sacramento, California
January 8–9, 1979—Houston, Texas
January 26, 1979—Washington, D.C.
June 20–21, 1979—Asheville, North Carolina.

Public Meetings on the National Forest Management Act Regulations:

September 15, 1978—Washington, D.C.
November 27, 1978—Washington, D.C.

## Appendix D

Members of the Committee of Scientists appointed by the Secretary of Agriculture, pursuant to Section 6(h) of NFMA:

Dr. Arthur W. Cooper, Committee Chairman, Botanist and Professor, School of Natural Resources, North Carolina State University Raleigh, North Carolina.
Dr. Thadis W. Box, Dean, College of Natural Resources and Professor of Range Science, Utah State University, Logan, Utah.
Dr. R. Rodney Foil, Mississippi Agricultural and Forestry Experiment Station, Mississippi State, Mississippi, and specialist in forest resource management.
Dr. Ronald W. Stark, Forest Entomologist and Coordinator of Research, University of Idaho, Moscow, Idaho.
Dr. Earl L. Stone, Jr., Soil Scientist and Professor, Department of Agronomy, Cornell University, Ithaca, New York.
Dr. Dennis E. Teeguarden, Professor of Forestry Economics, College of Natural Resources, University of California, Berkeley, California, and specialist in applying operations research to forest resource allocation problems.
Dr. William Webb, Wildlife Biologist, formerly Professor in Wildlife Management, State University of New York, Syracuse, New York, now retired.

## Appendix E—Supplementary Final Report of the Committee of Scientists, August 17, 1979

### *Introduction*

This report contains the views of the Committee of Scientists, established pursuant to section 6(h) of the National Forest Management Act of 1976 (NFMA), as to the scientific and technical adequacy of the May 4, 1979, draft of regulations prepared by the Forest Service to implement the land and resource management planning provisions of NFMA. In our earlier report (Federal Register 44(88): 26599–26657) we commented at length on various aspects of the scientific, technical, and legal adequacy of the first draft of the regulations published August 31, 1978 (Federal Register 43(170): 39046–39059). We also phrased our recommendations in specific regulatory language (Federal Register 44(88): 26643–26657).

In the present report, our final statement, we comment on how well the revised second draft (Federal Register 44(88): 26583–26599) speaks to issues raised in our earlier report and upon the many improvements and additions that have been made to the August 31, 1978, draft. In addition, we recommend changes in language where such seem needed.

A word about the Committee of Scientists and its work is in order. The Committee is composed of 7 persons appointed by the Secretary of Agriculture. It began its work in May, 1977, and essentially completed its duties in January 1979. Section 6(h) of NFMA charges the Committee to provide the Secretary with scientific and technical advice and counsel on the proposed guidelines and procedures to assure that an effective interdisciplinary approach for implementing section 6 of NFMA is adopted. Although the actual charge pertained only to subsection 6(g) of NFMA, the complex interrelationships among the various sections of the Act required that, in order to do its job effectively, the Committee had to consider all provisions of NFMA that relate to land management planning and timber management.

The Committee met 18 times at various locations throughout the country. Its meetings were entirely open and provided an excellent opportunity for members of interest groups to have access to the drafting of the regulations. Although we suspect that Congress envisioned a more reactive role for us, it proved most efficient for us to participate at times in the actual drafting process. Therefore, the final wording of the regulations does contain some material that originated in the Committee.

This final report was prepared by the Committee after a meeting in Asheville, N.C., on June 20–21, attended by four members (Cooper, Foil, Stone, Teeguarden). Box, Stark and Webb have read and approved the report.

Our earlier report stated that the first draft of the regulations, despite some important deficiencies, represented a major step forward in Forest Service policy. Furthermore, we considered it generally responsive to NFMA even though a number of important issues were not adequately handled. The second draft is a major improvement upon the first. It not only contains the needed specificity in important areas but also shows evidence of substantial creative thinking by the Forest Service in revising the original draft. It shows clear evidence that the Forest Service has considered both the public comments on the first draft and the specific recommendations of the Committee of Scientists.

Despite this praise, there are still some problems involved with the second draft. Some problems are associated with organization; others are associated with inadequacies or omissions. We identify these and suggest corrective language. Other problems arise from the

fact that the precise methodologies necessary to execute some of the critical planning steps simply have not been developed. We cannot develop such technology; we simply identify where these problems occur, point out their significance, and express our confidence that they can be solved if NFMA is supported as Congress intended.

After a brief general comment, our views are presented in the order that subjects appear in the May 4, 1979, second draft. When we refer to section numbers in the second draft we identify them as sections from the "second draft." Materials coming from our earlier report are identified by section number of the "COS report." Where we do not comment on a section or on a requirement, it can be assumed that we support the text proposed by the Forest Service in its second draft.

*General Comment*

The second draft of the regulations is a very careful exposition of a planning process. As we stated in our report on the first draft, we consider such emphasis on process entirely proper, because we interpret NFMA as instructing the Forest Service to develop a *process* for planning use of lands in the National Forest System.

The planning process of the second draft is developed from the first. We felt that the process described in the first draft could be made to work. The improvements in the planning process embodied in the second draft, together with the greater specificity of that draft, makes a competent blueprint for future planning. On the whole, we approve of the changes in the second draft. In our analysis we point out some concerns and propose language to cope with them.

We also repeat here the admonition of our earlier report: that the regulations have to be read in their entirety to be understood. The regulations are a complex, finely-tuned, document. Many requirements cannot be understood without reading several sections and observing the relationships between requirements in the several sections.

Finally, our report points out that the first draft regulations were not specific enough in prescribing actions and procedures to meet the requirements and intent of NFMA. This matter was the subject of intense debate in our meetings and the debate continues. Our report presented the view that the regulations should be specific in establishing the principles of land management planning and establishing the process to be used in applying those principles. We further stated that the regulations should not be specific in regard to prescriptions for the solution of on-the-ground management problems. Much of our report was directed to providing what we considered to be appropriate specificity in key areas. The second draft of the regulations contains a very high percentage of the recommendations made in our report and adds some specificity deemed necessary by Forest Service officials. The aggregate effect of these recommendations is a very detailed set of regulations. The degree of detail has, in some cases, led to the charge that the second draft is "over-specific." It is our view that this charge is invalid. We consider that, in virtually all cases, the degree of specificity in the second draft is required in order to meet congressional intent as specified in NFMA and its legislative history. It is simply not possible to carry out the planning requirements of NFMA in accordance with a set of regulations that contain nothing but generalities. Answers to vital management issues can be discovered by professionals, but Congress intended, and the public desires, that the process used be fully described in regulations. Although some may wish differently, the degree of specificity represented by the second draft and the recommendations of our report is what NFMA, in our opinion, requires.

*Section-by-Section Analysis*

Section 219.1 Purpose.

No comment.

Section 219.2 Scope and applicability.

No comment.

Section 219.3 Definitions.

No comment.

Section 219.4 Planning levels.

In our earlier report, we criticized the section on "Planning levels" in the first draft as failing to make clear the iterative nature of the exchanges among the various planning levels, and for inadequate description of development of the regional plan and its content. We pointed out the RPA/NFMA planning process must begin with on-the-ground assessments of the capabilities of each National Forest to supply goods and services at various budgetary levels, and of local demands. Such information should then be aggregated at the regional and national levels into regional plans and the RPA Assessment and Program. Regional and forest goals are then formulated by disaggregation of these data. The key is continuous iteration and interchange of information between the various planning levels.

We consider that § 219.4 of the second draft adequately captures the sense of this concept. The language of one section (219.4(c)(3)) however needs revisions. We propose that it be reworded as follows: "(3) Proposed Program alternatives. The Program is formulated from the Assessment analysis of resource supply and demand relationships and from alternative program objectives prepared at the national level and reviewed and evaluated at the regional and forest levels for feasibility and compatibility with regional and forest capabilities as expressed in regional and forest plans."

Section 219.4(b)(3) should cite section 13 of NFMA in addition to section 6 as the authority for development of land and resource management plans.

Section 219.5 Planning Process.

Organizationally this section represents the largest difference between the first draft and our report, on the one hand, and the second draft on the other. As we understand it, this section is designed to show that certain general features of the planning process pertain to the development of both regional and forest plans. It is followed by two sections (219.9 and 219.11) dealing with the specifics of regional and forest planning procedures respectively. We have no quarrel with this organization per se, although it is not what we recommended in our report. Our view is that if the Forest Service planners feel comfortable with the organization of the second draft, then it should be adopted. We do recommend, however, that section 219.5 be retitled "Regional and Forest Planning Process" to more accurately portray its intent.

Our concerns stem from what has been left out in generalizing to create this new general section and for requirements that are now not stated in clear enough terms.

Our first concern is that all reference to the discount rate that will be used in economic calculations, such as the determination of suitable lands for timber harvest, has been removed from the second draft. The discount rate is an important factor in calculations and the public is entitled to know where the Forest Service will obtain this datum. Accordingly, we recommended that § 219.5(c)(6) be reworded as follows: "(6) Guidelines for economic analysis practices established by the Chief, Forest Service, that will become effective within one year after final publication of these planning rules in the Federal Register, including a discount rate of analyses either equal to the rate used in the RPA Program or otherwise justified; and"

We are concerned also about treatment of inventory data and information collection in § 219.5(d). Because the requirements in this area

were specific in § 219.9(c) of the first draft and even more specific in § 219.10(c) of our report, the change to brief general requirements in § 219.5(d) of the second draft could be interpreted as indicating that the Forest Service does not consider availability of data to be a major problem in planning. We stressed in our report, and we now stress again, that unless adequate data are available, the entire planning process will be a meaningless game. No plan can be any better than the data that underlie it. Consequently, attention to data collection, storage, and treatment is a very important feature of the planning regulations.

We do not believe that the wording of § 219.5(d) is intended to downplay the importance of inventory data acquisition and management. Statements made in our meetings indicate that none of the National Forests now has adequate inventory data to support planning. Initial planning efforts by certain lead forests, however, apparently have given undue attention to data gathering without a clear relationship to the decision process. The altered language attempts to correct this misemphasis. We believe such correction can be achieved without downplaying the cardinal importance of a sound inventory process and suggest that the matter be resolved in the following way:

1. The wording in § 219.5(d) should be retained but augmented by clear direction that each regional and forest plan should outline a program for gathering and managing data related to the specific needs of that region or forest. A review of this problem by the Society of American Foresters proposes certain criteria for this information plan. We commend them to the Forest Service as being sound and useful for what we think is needed.

2. Material describing the nature of inventory data that will be needed in support of the respective plans should be inserted in the sections on criteria for regional plans (§ 219.10) and forest plans (§ 219.12). The insertion in criteria for regional plans need not be long, but substantially more detail, in line with § 219.10(c) of our report, should be included in the section pertaining to forest planning.

In § 219.5(e)(2) the word "demand" is used in two senses. We suggest that for clarity the words "level of demand" used in the sixth line of the section be changed to "level of goods and services."

Section 219.5(f) dealing with the formulation of alternatives is rather different from that which we recommended in § 219.10(f) of our report. Our concern is not with this but with the omission of some important ideas and the unworkability of several provisions. We suggest that:

1. Section (f)(1)(iii) should be reworded. The section is so stringently worded as to be unreasonable in its requirements. For example, it could be interpreted as requiring the restoration of an animal species that had been extirpated from the region of the forest prior to the time it became a National Forest. Section (e)(1)(iii) of our 219.10 could serve as a guide for more moderate language.

2. Section (f)(1)(iv) is operationally difficult. We suggest that the wording used be: "(iv) Each identified major public issue and management concern will be addressed in one or more alternatives; and"

3. The word "cost-effective" be changed to "efficient" in § 219.5(f)(1)(v) and § 219.12(b)(4)(iii) where it also occurs. The intent of the use of the term "cost-effective" is to maximize the present net worth of each alternative *subject* to meeting the objectives of the alternative. Therefore, the following sentence should be added to § 219.5(f)(1)(v): "Efficient refers to the set of practices which maximize the sum of anticipated discounted direct benefits less anticipated discounted direct costs."

4. A new subsection (iv) should be inserted in § 219.5(f)(2), to show the role of RPA goals and objectives in formulating alternatives, as follows: "(iv) the extent to which it fulfills the goals and objectives assigned in the regional or forest plan, as appropriate."

Section 219.5(g) dealing with estimation of the effects of alternatives exemplifies the loss of specificity which occurred as the planning requirements were generalized to relate to both the regional and forest plan. A comparison of this section with its counterpart in our report, § 219.10(f) shows that the version in the second draft consists primarily of very general statements similar to those contained in (1) through (4) of our report, plus an outline of the economic analyses that are to be made in determining the benefits and costs associated with each alternative. Nowhere is there any real direction with respect to estimating environmental or social effects. Our direction that the impact of each alternative on diversity be assessed (§ 219.10(f)(1) (vi) and (vii) (in our report)) is also lacking. Accordingly, we suggest that:

1. The entire section be rewritten to reflect a better balance among the effects that are to be assessed and to show that environmental and social effects and effects on diversity, in addition to economic implications, are to be assessed.

2. The economic requirements of § 219.5(g)(5) be rewritten. Specifically, (ii) and (iv) should be restructured, inasmuch as they now appear to conflict with one another. The procedure described in (ii) for assignment of dollar values to nonmarket goods and services is, in our opinion, suspect and should be eliminated. Subsection (iv) hints that the preferred alternative will be the one that maximizes net worth and this inference should be eliminated. We suggest that our § 219.10(f)(4), or its sense, be substituted for (iv). The words "real-dollar" in (iii) might better be replaced by the term "constant-dollar."

3. A subsection be added to tie the effects of the alternative to the regional plan such as: "(8) Display the relationship of expected outputs to the forest production goals given in the regional plan."

4. A special cross-reference be added at the end of 219.5(g) to indicate that each alternative will be evaluated in terms of the management standards specified in § 219.13 (b) and (g).

We recommend that a reference to the standards in § 219.13 (b) and (g) also be added to § 219.5(h) to indicate that they will play an important role in the evaluation of alternatives.

Finally, does the term "plan implementation" (§ 219.5(j)) apply to forest planning, regional planning, or national planning? Although Forest Service officials have control over program proposals and plan implementation, to what extent do all levels in the agency have control over budget *allocations*? If the intent of the section is to define appropriate actions to be undertaken if budget allocations are not sufficient, then (i)(2) and (j)(3) should be combined.

Section 219.6 Interdisciplinary Approach.

This section is improved over the first draft. Requirements relating to the appointment of the team, its *modus operandi*, and the philosophy that is to guide it are all more explicitly stated.

However, we continue to be concerned with this section because of NFMA's special charge to the Committee that is ". . . assure that an effective interdisciplinary approach is proposed and adopted." Our report set out three issues critical in assuring an effective interdisciplinary approach: These are 1) composition of the team and the qualifications of its members; 2) the philosophy that guides the team; and 3) the actual planning process that the team uses. Some minor additions, patterned after suggestions in our report,

will better assure that the section provides an effective interdisciplinary approach.

The requirements of the second draft with regard to item 1) above are virtually identical to those of our report with one important exception. We recommended in our § 219.6(b) that, when Forest Service employees with appropriate expertise or qualifications are not available, the team *shall* (emphasis added) consult persons other than Forest Service employees. The second draft states only that the team "may" consult such persons. We suggest that "shall" as in our original language is better direction in the event the required expertise is lacking.

Our report also emphasized that it would be highly desirable for qualified employees of state agencies to be able to serve as members of planning teams. We think that this is the most direct way to meet Congress' expectation that ". . . the expertise of affected state agencies will be obtained and used . . ." Furthermore, this procedure seemed to us to have the added value of substantially increasing the credibility of Forest Service planning, particularly at the state level. It now appears, however, that this is legally not possible. It is a fact, however, that careful coordination among Forest Service and state planners is critical to the success of plans, particularly in areas of shared responsibilities, such as wildlife management. It is not clear to us that the full desires of Congress for coordination with the states can be realized through the coordination process alone. Therefore, we recommend that the Forest Service explore other ways in which it can make judicious use of non-Forest Service employees as participants in the interdisciplinary planning process.

The material in the second draft relating to the qualifications of team members is similar to what is in our report. We consider the spelling out of additional attributes of team members in § 219.6(c) of the second draft to be a good addition. We suggest only two minor additions in this area:

1. insert the word "higher" after "or" in line 10 of § 219.6(c), and

2. add the last two sentences of 219.5(c) from our report to the end of § 219.6(c) of the second draft.

We consider that the policy direction to the team in the second draft § 219.6(a) is still weak. It specifies reasonably well what the team is supposed to do but does not specify the philosophy that will guide it. We suggest that the sense of the following two paragraphs, an amalgam from the introduction and (a) of our § 219.5, be added as the introduction to 219.6 of the second draft:

Section 219.6 Interdisciplinary Approach.

The Forest Service shall use an interdisciplinary approach at each level of planning in the National Forest System to assure that plans provide for multiple use and sustained yield of the products and services to be obtained from the National Forests in accordance with the Multiple Use-Sustained Yield Act of 1960. This approach should insure coordinated planning for outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. Land management systems, harvest levels, and procedures must be determined with due consideration for (1) their effects on all resources, (2) the definition of "multiple use" and "sustained yield" as provided in the Multiple Use-Sustained Yield Act of 1960, and (3) the availability of lands and their suitabilities for resource management.

An interdisciplinary team, appointed by the responsible Forest Service official, shall be used at each level of planning. Through essentially continuous interactions, the team shall insure that planning achieves the goals of multiple use and sustained yield management, by giving consideration to all resources and to the effects of management of one resource upon other resources. The interdisciplinary team shall be guided by the fact that the forests and rangelands of the National Forest System are ecosystems and, hence, that management for goods and services requires an awareness of the interdependencies among plants, animals, soil and other environmental factors that occur within such ecosystems. Proposed management programs must be both consistent with the nature of these interactions and based upon the results of economic and social analysis."

Section 219.7 Public Participation.

The guidance provided in this section is generally adequate. Sufficient direction is provided for the public participation effort so that Forest Service planners can be clear as to what is expected of them. Perhaps more important, sufficient guidance is provided so that the public can understand Forest Service obligations and procedures relating to public participation.

Although the section is somewhat different from that proposed in our report, it speaks to many of our suggested additions to the requirements contained in the first draft. The second draft, however, fails to specify that public participation is required at a certain minimum number of key steps in the planning process, and that the responsible official must document that he has analyzed and evaluated public input. Our proposed admonitions to encourage informal activities, discourage obscure notification, and encourage clarity in writing have been omitted. Finally, a very controversial limitation on the right of appeal has been inserted as a new § 219.7(o) in the second draft.

If the sense of the following minor additions are made to § 219.7 of the second draft, then the requirements for public participation activities (excluding the appeal provision) will be more useful and acceptable.

1. The order of the statements of intent in § 219.7(a) should be altered. As presently ordered, they suggest that informing the public of Forest Service activities is more important than insuring that the Forest Service understands the needs and concerns of the public. We recommend that (a)(3) be placed first, as the concept was in our report, and the others numbered accordingly. We also suggest that (a)(5) be reworded as follows: "(5) Demonstrate that public concerns and input are evaluated and considered in reaching planning decisions." The inclusion of the concept in (a)(4) is excellent. In reality, however, it is a statement of the basic goal of public participation, and the other statements are goals subordinate to it. Therefore, we suggest that the concept embodied in (a)(4) be moved up to the lead language of (a) where it can serve as part of the introduction to the various subgoals of public participation. If this is done, then the first sentence of § 219.7(f) should be deleted.

2. The requirements from line 10 to the end of § 219.6(c) in our report, which are omitted from 219.7(d) of the second draft, should be reinserted. This will provide minimal assurance that activities will stress informality and that materials are written in such a way as to be of maximum value to the public.

3. The notice requirements at the end of § 219.6(d) of our report should be inserted at the end of § 219.7(c) of the second draft.

4. A sentence should be added at the end of § 219.7(e) of the second draft containing the sense of the last sentence of our §219.6(j). We suggest: "In addition, the plan shall contain written material demonstrating that the significant issues raised during public participation have been analyzed and evaluated."

5. The sense of our § 219.6(g) should be inserted at an appropriate place in § 219.7 of the second draft. This will

insure that public participation activities occur at certain key steps during the planning process. We feel that the public should know where these steps are (where in the process it can expect to be involved) and that the Forest Service officials need to have these spelled out so as to assist in planning public participation programs.

6. Section 219.7(l) of the second draft should be reworded as follows: "All documents considered in development of plans will be available at the office where the plan was developed."

Solution of the problem presented by the limitation on administrative appeals embodied in § 219.7(o) of the second draft is a much more difficult problem. We understand why the Forest Service inserted this provision. It fears that endless appeals of planning decisions may prevent for years the final implementation of a plan. The administrative morass that such a situation would create is clearly undesirable. On the other hand, we understand why so many readers of the second draft, object to the Forest Service proposal. No one willingly wishes to surrender the right of administrative appeal and have his source of redress for planning decisions lie only in the courts. It appears to us that §219.7(o) will be undesirable and unacceptable to many. We recommend that the Forest Service develop a different solution, even though this may mean changes in its administrative appeal procedures.

Section 219.8 Coordination of Public Planning Efforts.

This section is vastly improved over the treatment in the first draft. It is now a workable blueprint for coordination of Forest Service planning with that of other State and Federal agencies.

Because this section so closely follows the recommendation of our report, we have no substantive changes to suggest. One important matter is the procedure outlined in § 219.8(d) of the second draft to facilitate coordination with State governments. This involves a requirement that regional foresters seek agreements with Governors or their designated representatives on certain crucial procedural measures. We had suggested that the Forest Service request each Governor to designate a person to act as contact person with respect to all planning activities. Although the Forest Service proposal is different from ours, it appears equally likely to work and equally capable of producing the desired results, that is, a closer liaison with each state during all levels of planning.

We suggest that state and local growth plans be added to the inventory requirement of § 219.8(f). Growth plans, where such exist, can be powerful expressions of political and social desire with regard to the location of industry and public services. To ignore them is unwise as we point out in our report.

We further suggest that the final draft include § 219.7(j) of our report or its sense. It seems important to make clear that the mutual effects of land management practices on National Forests and adjacent lands is a proper subject of the monitoring program. If such a requirement is not specified, we think it likely that monitoring will be confined to more obvious subjects such as water quality, soil changes, and biotic effects.

We also suggest the deletion of the words "and on which management is being practiced similar in character to that being practiced on adjacent national forest lands" which appear at the end of the first line of § 219.8(g) of the second draft. Although this phrase originated in our discussions of coordination with the Forest Service and were included in our report, they now appear to place an inappropriate limitation on the intent of the section.

Finally, we find that most of the cross-referencing additions we have recommended at the end of our section on coordination have been omitted from the second draft. Although such cross-referencing adds redundancy and length to the regulations, we consider it useful in understanding the relationships of the various requirements to each other, and recommend that it be restored.

Section 219.9 Regional Planning Procedure.

Our report stated that the proposed three-tiered planning process, involving national, regional, and forest planning was sound. We are pleased to see this concept substantially improved in the second draft. The requirements governing the regional planning procedure have been greatly expanded and clarified. Furthermore, a section dealing with the content of the regional plan and the planning criteria to be included in it has been added. Taken together, these sections provide an adequate framework for developing the regional plan. Although regional plans are not called for in NFMA, we thoroughly agree with the Forest Service view that they are critical to the whole RPA planning process. Nevertheless, some changes in §§ 219.9 and 219.10 of the second draft are desirable, in order that the regional plans can play the vital role envisioned by the Forest Service.

Section 219.9 is straight-forward and we find few problems in it. We recommend small changes as follows:

1. In § 219.9(a) we suggest, that for clarity, the phrase "forest planning areas" in the first sentence be changed to "National Forests or forest planning areas."

2. In § 219.9(d), the role of the State and Private Forestry and Experiment Station elements of the Forest Service is not clearly specified. We suggest that this could be done in the third sentence of § 219.9(d).

3. Section 219.9(i)(6) should read "National Forest System programs."

4. Section 219.9(i) on monitoring seems forced, and put in more for symmetry than for real effect. The items to be monitored seem very broad and very difficult to quantify. The section certainly does no harm but if it is to be left, we suggest that it be reworked so as to be somewhat more substantive and clearer in its objectives. The section should make clear that regional goals and objectives are to be the subjects of monitoring and that specific on-the-ground management practices will be monitored in conjunction with the individual forest plans.

Section 219.10 Criteria for Regional Planning Actions.

We find more substantive problems in this section dealing with regional planning criteria. The title is misleading inasmuch as the section includes criteria of two sorts: criteria for planning and decision criteria. How the term is used is not entirely clear. Perhaps it would be better simply to title the section "Regional Plan Content" and structure it around the outline in § 219.9(h). Uncertainty as to the meaning of the word "criteria" crops up again in conjunction with the long list of concerns in § 219.10(b). Most of these are not expressed as criteria and might better be phrased simply as concerns to be considered in regional planning.

Section 219.10(c) is weak because it does not make clear the relationship between the regional plan and the RPA Assessment and Program. The words "contribute and respond to" are hardly operational. We suggest the initial wording of the section be changed to: "(c) To the extent consistent with regional and forest resource capabilities, regional plans will meet RPA goals and objectives by providing long-range policies, goals, and objectives;"

Section 219.10(d) creates problems on several counts. First, the section clearly specifies material that relates to the content of the regional plan. The standards and criteria enumerated are items that must be developed in each

regional plan and which then set dimensions on the individual forest plans in a given region. We suggest either that § 219.9(h) be moved into § 219.10 to form the basis for the section, or that § 219.10(d) be moved to 219.9(h)(5). Either move would resolve the inconsistency.

The content of 219.10(d) also poses problems. The section is similar to 219.8(e) of our report except that it omits our sections (1) silvicultural systems, (5) management intensity and utilization standards, (6) regeneration criteria, and (7) cost standards for determination of land suitable for timber harvest. Section 219.10(d) of the second draft also omits important language at the end of our § 219.8(e) relating to the use of Regional Silvicultural Guides and to consistency among regions. We recommend that:

1. Our § 219.8(e)(1) and (5) be inserted as written in § 219.10(d) of the second draft.

2. Our § 219.8(e)(6) be inserted in § 219.10(d) of the second draft but that subsequent wording relating to the development of Regional Silvicultural Guides be revised so as to make clear that this section need not be subject to the same public participation constraints as are the other sections. We consider this to be appropriate because of the technical complexity of the issue.

3. A section relating to determination of cost standards be inserted in § 219.10(d) of the second draft as follows: "(9) Establishment of the price standard(s) to be used in determining the potential economic suitability of land for commercial timber production as required in § 219.12(b)."

4. All of the material at the end of our § 219.8(e) beginning with the words "These prescriptions, size limits, and standards . . ." and ending with the words ". . . justify such differences." be added at the end of § 219.10(d) of the second draft.

The statement in § 219.10(f) of the second draft that "Very little new data will be gathered through land and resource inventories" concerns us. We recognize the practical need to develop regional plans, or at least the first generation of them, without a massive effort to gather new data. The tone and implication of (f), however, is that data are not important to the regional plan and that it can be fabricated entirely from existing data. We think this implication is wrong and that it fails to convey the problem that the Forest Service faces. We suggest that § 219.10(f) be rewritten so as to provide some more substantive standards for data gathering in conjunction with the regional plan. Such guidance is sorely needed both by Forest Service planners and by the public that may seek to interact with the Forest Service in the development of regional plans.

Section 219.11 Forest Planning Procedure.

This section closely parallels the construction of the first draft and that of § 219.9 of our report. The principal differences are in (a) the greater specificity of the second draft, (b) inclusion of several sections (plan content, monitoring and evaluation) that were previously included with the section describing the forest planning process, and (c) addition of some new material (planning records).

Our report stated that the procedures proposed for forest planning were satisfactory and that they laid out the major responsibilities and requirements to be met. The proposed changes in this section strengthen it, and we therefore support its adoption.

Section 219.12 Criteria for Forest Planning Actions.

The second draft creates two sections (Criteria for forest planning actions (§ 219.12) and Management standards and guidelines (§ 219.13)) from material previously included in a single section of the first draft and in our report. We felt more comfortable having the material related to the management of a given resource included in a section treating that resource. As our report noted, however, placing all guidance for planning and managing each resource in an individual subsection dealing with that resource, might imply continuation of functional resource planning. This may be sufficient reason for the Forest Service to espouse the treatment contained in the second draft despite whatever awkwardness results. Whatever the reason, our opinion is that if the Forest Service understands this structure, and can operate comfortably under it, there is no technical reason why it should not be adopted.

The content of §§ 219.12 and 219.13 of the second draft, taken collectively, is close to that recommended in our report. We had criticized the section on management standards and guidelines in the first draft as being too limited in specificity and failing to deal with a number of critical issues. We are pleased at the adoption of the basic framework together with nearly all of the specific planning criteria and management standards of our report. We have a number of specific suggestions, however, for change which we think will substantially strengthen the section and render it more satisfactory.

As noted above in our comments on § 219.5, the second draft is deficient with respect to criteria for inventories, particularly those basic to the forest plan. We suggest that the sense of § 219.10(c) from our report could be made a new § 219.12(b) in the final draft. We agree that a "shopping list" such as this does not assure competent inventory but it does indicate that the agency is indeed serious about accumulating an adequate data base to support its planning and management programs.

The very difficult problem of determining lands available, capable, and suitable for timber production and harvesting is treated in § 219.12(b) of the second draft. Our report analyzed this issue at length and proposed an alternative procedure to that contained in the first draft. The second draft generally follows our proposal. Nevertheless the procedure outlined in the second draft contains some problems that need to be resolved before it will be entirely satisfactory. These problems and our proposed resolutions are as follows:

1. Section 219.12(b)(1)(i) requires that any land that has been ". . . legislatively or administratively withdrawn from timber production" be designated as not suited for timber production. We agree that such a screen should be used first in determining the suitability of lands for timber harvest. Because there is some ambiguity as to what is meant by the term "administratively withdrawn", however, we recommend that the term be defined by reference to the authority used to make the withdrawal.

2. Some of the criteria used in making the economic tests for suitability have been moved to § 219.5, and the wording of others has been altered in the second draft. These changes are substantive and appear to imply policies with which we disagree. The Forest Service has chosen not to use our proposal that direct benefits be expressed in terms of an "alternative cost standard." We recognize that the concept is untried and that its implementation might be difficult, but the concept has merit and should be retained as an alternative approach. However, the use of "expected future stumpage prices" as the measure of direct benefits in the second draft needs further development before it can be accepted as a valid measure of public benefit. Our reservations about using stumpage price as a measure of public benefit were discussed in our previous report (see our discussion of § 219.10(d) of the first draft). What is and what is not included in the term "stumpage" needs to be defined. For example, does it include

roads and other aspects of the sale of timber? Furthermore, because the benefit/cost criterion will be used, either formally or informally, as a decision criterion, "stumpage price" becomes a policy matter.

Accordingly, we recommend that a schedule of prices, whether expressed as stumpage price or alternative cost standard, be determined as a part of the regional plan. We have included recommended language for such determination in conjunction with our comments on § 219.10 of the second draft (See discussion of § 219.10(d), Item 3). Because of the geographic variation in Forest Service Regions, this schedule will have to be broken down by subregions in the regional plan.

3. A statement concerning the "interest rate used to discount future benefits and costs of timber production" has been eliminated entirely from the second draft. We understand that this determination may well be made by an authority other than the Forest Service, such as OMB or the Secretary of Agriculture. Despite this, we think that specification of the ultimate source of the interest rate used would help public understanding. As stated earlier, we suggest that it be added among the economic criteria outlined in § 219.5(c)(6), and cross-referenced into § 219.12(b).

4. Because specification of the practices associated with a particular intensity of management is critical to the economic test for suitability, we recommend that the following qualifier be inserted after the first sentence of § 219.12(b)(2)(iii) in the second draft: "However, the practices associated with a particular intensity of management must be economically efficient."

5. Section 219.12(b)(4) is unclear. Paragraph (4)(i) seems to relegate timber production to a residual use. The shift in order of the three paragraphs, (i), (ii), and (iii) from that in our report changes the emphasis of the section. We recommend that the order and wording embodied in (A), (B), and (C) of our § 219.(e)(1)(iii) be used instead of the treatment now in the second draft.

6. Section 219.11(e)(1)(iv) in our report has been omitted from the second draft. Although the basic concept embodied in this paragraph seems to be treated in the evaluation of alternatives requirements, we consider the sense of the paragraph important to a thorough understanding of the determination of lands suitable for timber harvest. We recommend that this paragraph be reinserted as § 219.12(b)(5) of the final draft, with the current (5) becoming (6).

The provisions governing determination of timber harvest schedule (§ 219.12(d) of the second draft) are essentially those of the first draft which, in turn, derived from language we recommended. We support the proposed language, we consider that the provisions for determining departures from the base schedule are both appropriate and consistent with NFMA, and we concur with the change that requires a plan containing a departure to be approved by the Chief of the Forest Service. Several minor problems in this section have been brought to our attention and we suggest they be dealt with as follows:

1. It was pointed out to us in our June, 1979, meeting that the present wording of § 219.12(d)(1)(ii)(D) seems redundant and unnecessary in light of the specified requirement for "long term sustained yield" elsewhere in § 219.12(d)(1)(i). Furthermore, this paragraph could require unnecessarily expensive analyses when extremely irregular initial conditions combine with short-run objectives so as to make it impossible to achieve the long-term sustained-yield structure except after a considerable period of time. We consider this paragraph as necessary, however, because it spells out a design standard for the determination of departures. Therefore, we recommend that the initial wording of (D) be altered as follows: "(D) For all harvest schedules, demonstrate that each is consistent with achievement of a forest structure that will enable perpetual timber harvest . . ."

2. Section 219.12(d)(1)(iii) has now been worded in such a way that only one alternative is required in conjunction with the calculation of a departure. Furthermore, the wording requires that the alternative be "considered and formulated." We recommend the following substitute wording: "(iii) One or more alternatives providing for departures from the base harvest schedules will be formulated, considered and subjected to comparative analysis when any of the following conditions occur:"

Finally, it has been pointed out to us that the timber harvest scheduling provisions relate primarily to even-aged management and harvesting. This may create problems if the provisions are to be applied to other harvest and management systems.

Provisions of the second draft relating to identification and management of wilderness (§ 219.12 (e) and (f)) agree with our report (§ 219.11(g)) in all respects, except to specify that lands designated for non-wilderness purposes in the recent RARE II classification need not be again assessed as wilderness as the first generation of new forest plans is prepared. We concur with this exception and consider the revised draft wholly satisfactory with respect to the wilderness resource.

The second draft includes virtually all of the language that we recommended for special guidelines to govern the planning for wildlife and fish (§ 219.12(g)), range (§ 219.12(h)), recreation (§ 219.12(i)), and soil and water resources (§ 219.12(k)). We have no further recommendations in regard to these sections.

We are pleased to see that a section dealing with mineral resources (§ 219.12(j)), is contained in the second draft. We also commend the Forest Service for including provisions relating to cultural resources and for research natural areas. All three of these new provisions add an important dimension to the regulations.

Section 219.13 Management Standards and Guidelines.

As mentioned, the content of § 219.13 is similar to material in parts of § 219.11 of our draft. The section dealing with standards that all management practices will meet (§ 219.13(b)) is an expansion of our § 219.11(a). Likewise, the requirements of most other sections can be tracked back to our § 219.11(a) which, in part, can be tracked to the report of the Forest Service Silviculture Task Force presented to our meeting in the fall of 1978. Generally speaking, we find the language in § 219.13 of the second draft acceptable. Certain issues deserve further comment, however, and in some cases minor changes of wording seem called for.

The silvicultural provisions of the second draft (§ 219.13 (c) and (d)) differ from our recommendation in only one major respect, that is, control of the size of openings created by harvest cutting.

The second draft establishes three categories of maximum size according to forest regions and type, with a blanket 40 acres maximum applying to all types of the contiguous U.S. other than the Douglas-fir type where the limit is 60 acres (§ 219.13(d)). Larger openings may be permitted as exceptions in regional plans. These provisions are in contrast to our rationale and suggested regulation language (§ 219.11(a)(3)) which assigned setting of appropriate maximums to the regional plans in the interests of greater precision and flexibility.

Otherwise the provisions of the draft under Vegetation Management (§ 219.12(c)) and Management Standards and Guidelines § 219.13(c) are in close agreement with our suggested language (§ 219.10(a)(2) and § 219.11(a)(3)). The factors to be considered in establishing

size limits for openings in the regional plan, under our proposal (§ 219.11(a)(3)), however, now appear as considerations when establishing exceptions to nationally prescribed maximums in the regional plan.

We recognize that setting national maximum size limits has taken on a symbolic importance for some environmental groups. The provisions of Alternative No. 6 of the DEIS in this respect are an evident concession to such feelings, and do not have any factual basis in forest ecology and land management. We recognize also that present practices on National Forests commonly are within the indicated maximums so that delays, added costs or lower returns, and reduced management options may occur in relatively few locations if the provisions for exceptions are indeed used effectively. In our judgment, however, the imposition of nationally prescribed maximums lacks any technical or scientific foundation, and will in no way improve the quality of resource management. Rather it is simply an unnecessary constraint or source of delay in interdisciplinary planning at the Forest and Regional levels.

We again call attention to the discussion of this issue in our report: "There simply is no scientific justification for establishing any single maximum (or minimum) area limit for the entire nation, nor yet for any region as a whole. In our view, the sole technical purpose of maximum size limits is as an outside safeguard against the unpredictability of natural events and on-the-ground misjudgments or excesses of zeal. That purpose is served only when the limits are made appropriate to particular sets of terrain, soil, climatic probabilities, and vegetation. A single arbitrary value, selected as a compromise, must necessarily prevent or needlessly hamper planning operations at some locations while providing wholly inadequate safeguards to more difficult or hazard-prone situations at others.

The present draft regulations require that each regional plan establish maximum limits for the area to be cut in one harvest operation, according to geographical area and forest type (§ 219.10(d)(3)(vi)). These provisions spell out no less than ten factors that must be considered in setting these limits. Furthermore, the regional plan is subject to the environmental impact statement process."

Accordingly, we reiterate our original recommendation that each regional plan establish a series of maximums appropriate to particular forest types and physical situations.

We also call attention to the term "tree openings" in the lead sentence of § 219.13(d) of the second draft. This term is ambiguous and should be replaced with language such as "When openings are created in the forest by the application . . ."

In our report we pointed out that the first draft of the regulations contained numerous provisions intended to safeguard soil stability, soil productivity and water resources, and recommended two additional provisions: an emphasis on official technical handbooks consolidating site specific instructions, and a special planning requirement for streamside and lakeside margins.

The present draft in (§§ 219.12(k) and 219.13 (b), (c), (e) and (f)) includes essentially all of the previous and recommended provisions contained in our proposed language (§ 219.11(a) (4), (5) and 219.11(f)) but with improved phrasing. There are two consequential differences, however.

Section 219.13(e) of the second draft, establishing the special planning strips, states that, "no management practices will be permitted (in these) that seriously or adversely affect water conditions or fish habitat." This compares with our proposed language, "all management activities, such as . . ., will be conducted in such a way as to protect these waters from detrimental changes . . . (in compliance with other cited regulations) and to the extent that total multiple use benefits exceed costs." We regard the latter language as more realistic and flexible in practice, with an emphasis on finding solutions, where these exist, rather than encouraging blanket prohibitions.

Section 219.13(f) of the second draft, which includes provision for official technical handbooks, omits our requirement that these contain performance standards and tolerance limits. We recognize that an objective basis for setting definitive standards and limits is lacking in many instances at present, and hence our proposal may be too stringent. Nevertheless we regard the establishment of such standards and limits as preferable to use of unspecified qualitative terms.

The second draft also contains an important new provision § 219.13(b)(12) regarding establishment of vegetation on the total area disturbed by roads. Among other benefits the resulting stabilization of disturbed surfaces would reduce likelihood of sediment entering streams in some situations.

Accordingly, we consider the revised draft as highly satisfactory in respect to soil and water protection, but recommend that the provision on special planning strips be changed to more nearly accord with the sense of our original proposal.

We wish to emphasize also that the requirement for special planning of strips bordering permanent streams and lakes is by no means an automatic provision for "buffer strips". The required planning may indeed call for "buffer strips" to trap sediment, to prevent equipment, animal, or human activity along water margins, or to control water temperature where these are appropriate. But elsewhere the physical circumstances and the outcome of interdisciplinary planning may result in quite other treatments, provided that water quality is not impaired. Accordingly we consider the use of the term "buffer strip" as a synonym for special planning strips unfortunate, not in accord with the specific language of the regulations, and likely to mislead the casual reader. We recommend that it be replaced in the DEIS. Moreover we recommend that the rationale for treatment of such strips, as contained in our report, be made explicit in the final EIS to avoid possible misunderstanding.

Diversity continues to be one of the most difficult issues with which these regulations must deal. We analyzed the issue in our report and stressed that, in our opinion, Congress used the term diversity to refer to biological variety rather than any of the quantitative expressions now found in the biological literature. Accordingly, we supported a straightforward definition of the term, such as that found in the second draft (§219.3(e)) and helped develop a treatment of diversity that insured it would be considered throughout the planning process rather than as one isolated step in the process.

The treatment of diversity in the second draft is generally consistent with our report. However, there are some important differences to be resolved in the final draft. Our § 219.10, describing the forest planning process, required (§219.10(c)(2)(viii)) that quantitative data useful for determining diversity be collected. No such requirement appears in the second draft; it will be restored however, if our recommendations relating to inventory requirements are followed.

Furthermore, our sections on the formulation of alternatives (§219.10(e)(2)(iv)) and estimation of the effects of alternatives (§219.10(f)(1) (vi) and (vii)) both required that diversity be considered in structuring and evaluating alternatives. Both of these requirements have been lost in the process of generalizing the planning process to pertain both to regional and forest plans. Because both of these requirements are critical to an appropriate evaluation of

diversity, we recommend that they be reinserted. Our proposed changes in §219.5 of the second draft would resolve this problem.

In rewriting two key sections relating to diversity, the Forest Service seems to have created problems for itself and, to some extent, distorted the intent of the provisions contained in our report. The two sections involved are § 219.11(a)(1)(v) from our report which is equivalent to § 219.13(b)(5) of the second draft, and § 219.11(a)(6) from our report, which is equivalent to § 219.13(g) of the second draft. We recommend these be rewritten as follows:

"(5) Provide for and maintain diversity in plant and animal communities to meet overall multiple-use objectives, including, where appropriate and to the degree practicable, preservation of the variety of endemic and desirable naturalized plant and animal species currently found in the area covered by the forest plan;"

"(g) Diversity of plant and animal communities and tree species will be considered throughout the planning process. Inventories will include quantitative data making possible the evaluation of diversity in terms of its prior and present condition. For each planning alternative, the interdisciplinary team will consider how diversity will be affected by various mixes of resource outputs and uses, including proposed management practices. The selected alternative will provide for diversity of plant and animal communities and tree species to meet the overall multiple-use objectives of the planning area. To the extent consistent with the requirement to provide for diversity, management practices, where appropriate and to the extent practicable, will preserve and enhance the diversity of plant and animal communities and tree species so that it is at least as great as that which would be expected in an unmanaged part of the planning area. Reductions in existing diversity of plant and animal communities and tree species will be made only where needed to meet overall multiple-use management objectives. Planned type conversions will be justified by an analysis showing biological, economic, and social consequences, and the relation of such conversions to the process of natural change."

We also recommend that the word "natural" in the fifth line of the definition of diversity in § 219.3(e) be removed. The wording that we recommend for § 219.13(b)(5) makes clear that preservation of the variety of endemic and desirable naturalized plant and animal species is a goal of diversity considerations. Therefore, the word "natural" is not necessary in the definition.

Finally, many comments have been raised indicating that no reference should be made to "species" or "species abundance" in the definition of diversity that appears in the final draft. Such references appear in the definition in the second draft (219.3(e)). The argument against including references to species and abundance in the treatment of diversity is that no references to these dimensions of the diversity problem appear in NFMA or its legislative history. If this were as far as the matter went, it could be resolved by omitting them from the definition. However, in assessing the diversity of plant and animal communities the Forest Service must deal with both numbers and kinds of species. It is simply not possible to assess diversity without knowing what kinds of species compose the different communities in a region and the numbers of each that are present for the simple reason that kinds and numbers are the biological ways that diversity is measured. On the other hand, controlling the maximum numbers and general distribution of say, deer and bear, may be absolutely necessary in multiple use management. The problem is a true administrative "Catch-22", and it seems to us the Forest Service can do little other than it has done in phrasing its regulatory response to Congress' direction.

Section 219.14 Research.

The requirements for incorporating research into the planning process seem to have been simplified over those in our report. We have concluded that the essential points are in the second draft and that additional wording would not be particularly useful.

A recommendation that emerged from our discussions, however, is that the required annual report, which is to describe the status of major research programs and relate this to National Forest management (219.14(c) of the second draft), be developed at the regional, rather than national, level. We feel that research can best be coordinated at the regional level and that the report will be more useful if prepared there.

We call attention again to the need for better coordination between research and forest management. Coordination of forest planning and Forest Service research is an administrative matter, however, and it is unlikely to be measurably improved by requirements in regulation form.

Section 219.15 Revision of Regulations.

We are pleased that a provision for periodic revision of the regulations is included. Although we understand that the Secretary of Agriculture can appoint whatever advisory committees he might desire, we still feel that there is great benefit to be derived from continued involvement of a Committee of Scientists, such as ours, in the process of further revision of these regulations.

Therefore, we recommend that such a provision be included.

Section 219.16 Transition Period.

No comment.

Closing Comments

In closing, we would emphasize several points. Some relate to our review of the second draft of the regulations; the remainder concern the actions required during the next few years to successfully implement these regulations.

We must stipulate that, of necessity, our review of the second draft has been limited. Each of us has read the draft thoroughly and four of us discussed it at our last meeting. Because of the complexity of the regulations and the rather sweeping reorganizational changes made in the draft, however, there is a possibility that we have not caught or evaluated all changes of consequence.

The planning process described by these regulations is a complex one. It will be costly, in terms of personnel and resources, to implement. Our report comments on the need for adequate numbers and a balanced mix of interdisciplinary team members in the Forest Service if the planning envisioned by these regulations is to become reality. We continue to be concerned about this matter, and problems encountered by the Forest Service its trails of these regulations on certain "lead Forests" suggest that such concern is justified. Originally, The Forest Service hoped to be able to develop interdisciplinary planning teams for given forests by assigning specialists to temporary duty at a succession of National Forests. In this way the same specialists could deal with similar issues on several forests progressively, thus holding down personnel costs. For a variety of reasons that appear to be well justified, it now appears desirable to train local planners to deal with their own issues, in order that there be local leadership in the development of the plan and, more importantly, local commitment to its implementation. Key specialists assigned from the Region can provide some leadership and quality control, but the urgent need is for planning competence on each forest supervisor's staff. This requires more personnel skilled in planning, especially in such areas as economics, data management and recreation, than are now available. This need must be met somehow if planning is to succeed.

It seems clear to us, therefore, that our report was correct in stating that Forest

Service estimates of the cost of planning were grossly conservative. Our report cited Department of Agriculture data; contained in the House Report on NFMA, indicating planning costs of $20 million per year for the five fiscal years from 1977–1981. Revised figures (p. 26576) in the draft EIS accompanying the second draft indicate the costs will be nearly $140 million for the seven fiscal years from 1979–1985. This averages slightly less than $1 million per plan. An increased manpower need of 1.9 man years per plan is also estimated. Although these figures are higher than earlier estimates, we still regard them as conservative. The total added effort and costs required by inventory, economic analysis, and monitoring requirements alone pose new dimensions, far beyond anything now under way in the Forest Service.

Thus we again emphasize our earlier statement that, if the Congressional intention of NFMA is to be realized, adequate funding for increased personnel and data acquisition *must be made* available by each administration and by Congress. If this is not done, the process will not work.

The regulations provide guidelines for planning, and the standards or procedures for developing standards, for critical management actions on the National Forests. We think that sound, wise answers to local and regional problems, such as timber harvest scheduling, harvest methods, and wilderness allocation, can be generated through the RPA/NFMA planning process. The task now is to make that process work. We trust that both Congress, and the various groups with interests in management of the National Forests, will allow the planning process to be implemented and allow it to deal with critical management problems.

We close this report and our participation on a positive note. The Forest Service has been through some trying times, recently. RARE-II, NFMA, and reorganization have been difficult issues with which to deal. The agency has come through all of these with its professional stature intact. The quality of the regulations developed for implementing the planning provisions of NFMA indicates that the Forest Service can respond to public concerns in a professional, yet sympathetic, way. As we said in our report, if the agency can bring the same dedication to implementing the regulations that it brought to writing them, then certainly the outcome will be positive.

Finally, a word of thanks and congratulations to Chief John R. McGuire and his staff. The assistance they provided us made a difficult task far easier. Although we disagreed many times, we were able to resolve virtually all of our substantive differences. We particularly wish Chief McGuire well on the occasion of his retirement. We trust that new Chief Max Peterson will have the support and forbearance of all, both inside and outside the Forest Service, as he turns to the difficult task of implementing these sweeping regulations.

Title 36 of the Code of Federal Regulations, is amended by adding a new Part 219, consisting of Subpart A as set out below.

## PART 219—PLANNING

### Subpart A—National Forest System Land and Resource Management Planning

Sec.



Authority.—Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613); and 5 U.S.C. 301.

### Subpart A—National Forest System Land and Resource Management Planning

#### § 219.1 Purpose.

(a) The regulations in this subpart set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System. The purpose of the planning process is to meet the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (hereafter RPA) including procedures under the National Environmental Policy Act of 1969 (hereafter NEPA) for assessing economic, social, and environmental impacts. These regulations prescribe how land and resource management planning is to be conducted on National Forest System lands. The resulting plans will provide for multiple use and sustained yield of goods and services from the National Forest System.

(b) Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, harvesting levels and procedures under the principles of multiple use and sustained yield and the availability and suitability of lands for resource management. All levels of planning will be based on the following principles:

(1) That the National Forests are ecosystems and their management for goods and services requires an awareness of the interrelationships among plants, animals, soil, water, air, and other environmental factors within such ecosystems. Proposed management will consider these interrelationships;

(2) Consideration of the relative values of all renewable resources, including the relationship of mineral resources to these renewable resources;

(3) Establishment of goals and objectives for the sustained yield of products and services resulting from multiple-use management without impairment of the productivity of the land;

(4) Protection and, where appropriate, improvement of the quality of renewable resources;

(5) Preservation of important historic, cultural and natural aspects of our national heritage;

(6) Protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise their traditional religions;

(7) Provision for the safe use and enjoyment of the forest resources by the public;

(8) Protection of all forest and rangeland resources from depredations by the forest pests, using ecologically compatible means;

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, Indian tribes, and adjacent private landowners;

(10) A systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management;

(11) Early and frequent public participation;

(12) Establishment of quantitative and qualitative standards and guidelines for land and resource planning and management;

(13) Management of National Forest System lands in a manner that is sensitive to economic efficiency; and

(14) Responsiveness to changing conditions in the land and changing social and economic demands of the American people.

§ 219.2 Scope and applicability.

The regulations in this subpart apply to the lands and waters in the National Forest System. Planning requirements for managing special areas, such as wilderness, wild and scenic rivers, national recreation areas, and national trails, will be included in land and resource management planning pursuant to these regulations. Whenever the special area authorities require additional planning, those authorities will control in implementing the planning process under this subpart.

§ 219.3 Definitions.

For purposes of this subpart the following words shall have these meanings:

(a) "Allowable sale quantity": The quantity of timber that may be sold from the area of land covered by the forest plan for a time period specified by the plan. This quantity is usually expressed on an annual basis as the average annual allowable sale quantity.

(b) "Assessment": The Renewable Resource Assessment required by the RPA.

(c) "Base timber harvest schedule": The Timber Harvest Schedule in which the planned sale and harvest for any future decade is equal to or greater than the planned sale and harvest for the preceding decade of the planning period and this planned sale and harvest for any decade is not greater than long-term sustained yield capacity.

(d) "Biological growth potential": The average net growth attainable in a fully stocked natural area of forest land.

(e) "Capability": The potential of an area of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity. Capability depends upon current conditions and site conditions such as climate, slope, landform, soils and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.

(f) "Corridor": A linear strip of land which has ecological, technical, economic, social, or similar advantages over other areas for the present or future location of transportation or utility rights-of-way within its boundaries.

(g) "Diversity": The distribution and abundance of different plant and animal communities and species within the area covered by a land and resource management plan.

(h) "Economic efficiency analysis": A comparison of the values of resource inputs (costs) required for a possible course of action with the values of resource outputs (benefits) resulting from such action. In this analysis, incremental market and nonmarket benefits are compared with investment and physical resource inputs.

(i) "Environmental analysis": An analysis of alternative actions and their predictable short- and long-term environmental effects, which include physical, biological, economic, social, and environmental design factors and their interactions. Environmental assessment is the concise public document required by the regulations for implementing the procedural requirements of NEPA, [40 CFR 1508.9].

(j) "Environmental documents": A set of concise documents to include, as applicable, the environmental assessment, environmental impact statement, finding of no significant impact, or notice of intent.

(k) "Even-aged silviculture": The combination of actions that results in the creation of stands in which trees of essentially the same age grow together. Managed even-aged forests are characterized by a distribution of stands of varying ages (and therefore tree sizes) throughout the forest area. Regeneration in a particular stand is obtained during a short period at or near the time that the stand has reached the desired age or size and is harvested. Clearcutting, shelterwood cutting, seed tree cutting, and their many variations are the cutting methods used to harvest the existing stand and regenerate a new one. In even-aged stands, thinnings, weedings, cleanings, and other cultural treatments between regeneration cuts are often beneficial. Cutting is normally regulated by scheduling the area of harvest cutting to provide for a forest that contains stands having a planned distribution of age classes.

(l) "Goal": A concise statement of the state or condition that a land and resource management plan is designed to achieve. A goal is usually not quantifiable and may not have a specific date for completion.

(m) "Goods and services": The various outputs produced by forest and rangeland renewable resources. The tangible and intangible values of which are expressed in market and nonmarket terms.

(n) "Guideline": An indication or outline of policy or conduct.

(o) "Integrated pest management": A process in which all aspects of a pest-host system are studied and weighed to provide the resource manager with information for decisionmaking. Integrated pest management is, therefore, a part of forest or resource management. The information provided includes the impact of the unregulated pest population on various resources values, alternative regulatory tactics and strategies, and benefit/cost estimates for these alternative strategies. Regulatory strategies are based on sound silvicultural practices and ecology of the pest-host system. Strategies consist of a combination of tactics such as stand improvement plus selected use of pesticides. The overriding principle in the choice of strategy is that it is ecologically compatible or acceptable.

(p) "Long-term sustained yield capacity": The highest uniform wood yield from lands being managed for timber production that may be sustained under a specified intensity of management consistent with multiple-use objectives.

(q) "Management concern": An issue or problem requiring resolution, or condition constraining management practices identified by the interdisciplinary team.

(r) "Management direction": A statement of multiple-use and other goals and objectives, the management prescriptions, and the associated standards and guidelines for attaining them.

(s) "Management intensity": The relative cost of a possible management direction and/or management practice.

(t) "Management practice": A specific action, measure, or treatment.

(u) "Management prescription": Management practices selected and scheduled for application on a specific area to attain multiple-use and other goals and objectives.

(v) "Multiple use": "The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some lands will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." (16 U.S.C. 531(a))

(w) "Objective": A specific statement of measurable results to be achieved within a stated time period. Objectives reflect alternative mixes of all outputs or

achievements which can be attained at a given budget level. Objectives may be expressed as a range of outputs.

(x) "Planning area": The area covered by a Regional or Forest Plan.

(y) "Policy": A guiding principle upon which is based a specific decision or set of decisions.

(z) "Program": The Renewable Resource Program required by the RPA.

(aa) "Public issue": A subject or question of widespread public interest relating to management of National Forest System lands identified through public participation.

(bb) "Public participation activities": Meetings, conferences, seminars, workshops, tours, written comments, response to survey questionnaires, and similar activities designed and held to obtain comments from the general public and specific publics about National Forest System land management planning.

(cc) "Real dollar value": A value from which the effect of change in the purchasing power of the dollar has been removed.

(dd) "Responsible official": The Forest Service employee who has been delegated the authority to carry out a specific planning action.

(ee) "Silvicultural system": A combination of interrelated actions whereby forests are tended, harvested, and replaced. The combination of management practices used to manipulate the vegetation results in forests of distinctive form and character, and this determines the combination of multiple resource benefits that can be obtained. Systems are classified as even-aged and uneven-aged.

(ff) "Standard": A principle requiring a specific level of attainment, a rule to measure against.

(gg) "Suitability": The appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and evironmental consequences and the alternative uses foregone. A unit of land may be suitable for a variety of individual or combined management practices.

(hh) "Sustained-yield of the several products and services": "The achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forest without impairment of the productivity of the land." (16 U.S.C. 531(b))

(ii) "Timber harvest schedule": The quantity of timber planned for sale and harvest, by time period, from the area of land covered by the forest plan. The first period, usually a decade, of the selected harvest schedule provides the allowable sale quantity. Future periods are shown to establish that sustained yield will be achieved and maintained.

(jj) "Timber production": The growing, tending, harvesting and regeneration of regulated crops of industrial wood. Industrial wood includes logs, bolts or other round sections cut from trees for industrial or consumer use, except fuelwood.

(kk) "Uneven-aged silviculture": The combination of actions that result in the creation of forests in which trees of several or many ages may grow together. Managed uneven-aged forests may take several forms depending upon the particular cutting methods used. In some cases, the forest is essentially similar throughout, with individual trees of many ages and sizes growing in close association. In other cases, small groups of trees of similar age may be intermingled with similar groups of different ages; although the groups are even aged, they are not recorded separately. Finally, an uneven-aged forest may contain two or three distinct age classes on the same area, creating a storied forest. Under uneven-aged silviculture, regeneration is obtained several or many times during the period required to grow an individual tree to maturity. Single-tree selection cutting, group selection cutting, and other forms of partial cutting are used to harvest trees, obtain regeneration, and provide appropriate intermediate culture. Cutting is usually regulated by specifying the number or proportion of trees of particular sizes to retain within each area, thereby maintaining a planned distribution of size classes. Scheduling by area harvest is often used as well.

### § 219.4 Planning levels.

(a) The planning process requires a continuous flow of information and management direction among the three Forest Service administrative levels: national, regional, and designated forest planning area. Management direction will be based principally upon locally derived information about production capabilities; reflect conditions and circumstances observed at all levels; and become increasingly specific as planning progresses from the national to regional level, and from the regional to designated forest planning area. In this structure, regional planning is the principal process for conveying management direction from the national level to designated forest planning areas and for conveying information from such areas to the national level.

(b) Planning levels and relationships are set forth in paragraphs (b) (1) through (3) of this section.

(1) *National.* The Chief, Forest Service, will develop the Assessment which will include an analysis of present and anticipated uses, demand for, and supply of the renewable resources of forest, range, and other associated lands with consideration, and an emphasis on, pertinent supply and demand and price relationship trends; an inventory of present and potential renewable resources and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government; a description of Forest Service programs and responsibilities in research, cooperative programs, and management of the National Forest System; and analysis of important policy issues and consideration of laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands. This assessment will be based on the future capabilities for each forest and regional planning area. Based on the Assessment which will include information generated during the regional and forest planning process, the Chief will develop alternative Programs. In formulating those alternatives the costs of supply and the relative values of both market and nonmarket outputs will be considered. The alternatives will include national renewable resource goals, quantified objectives, resource outputs and represent a range of expenditure levels sufficient to demonstrate full opportunities for management. A portion of each national goal and objective, expressed in the selected Program as a range of outputs, will be assigned to each region and be incorporated into each regional plan. The objectives assigned to each region will be based on local supply capabilities and market conditions. Economic efficiency and potential environmental effects will be considered in these assignments.

(2) *Regional.* Each regional forester will develop a regional plan in accordance with the procedures, standards, and guidelines specified in this subpart. The required planning process is established in § 219.5. Procedural requirements for regional plans are established in §§ 219.9 and 219.10, and resource management standards and guidelines are set forth in § 219.13. The regional planning process will respond to and incorporate the Program direction established by the Chief, Forest Service, under paragraph (b)(1) of this section. Regional objectives will be assigned to designated forest planning areas. These assignments will be based upon: supply capabilities,

socio-economic assessments, potential environmental effects, economic efficiency criteria, community stability objectives, and resource management standards and guidelines which have been established by the planning process. The regional forester may request adjustment of assigned regional objectives prior to their incorporation into the plan. Any adjustment will require the approval of the Chief, Forest Service.

(3) *Forest.* Forest plans will be developed for all lands in the National Forest System in accordance with the procedures, standards, and guidelines specified in this subpart. The planning process is established in § 219.5, and procedures are set forth in §§ 219.11 and 219.12. Resource management standards and guidelines are established in § 219.13. One forest plan may be prepared for all lands for which a forest supervisor has responsibility, or separate forest plans may be prepared for each national forest, or combination of national forests, within the jurisdiction of a single forest supervisor. These forest plans will constitute the land and resource management plans developed in accordance with §§ 6 and 13 of the RPA, as amended, and will include all management planning for resources. Forest plans will address the goals and objectives established by the regional plan. The objectives assigned to each forest will be evaluated in order to assure that they are compatible with local supply and demand, economic efficiency, community stability, and potential environmental effects. Based upon this evaluation, the forest supervisor may request adjustment of assigned objectives prior to their incorporation into the forest plan. Any such adjustment requires the approval of the regional forester.

### § 219.5 Regional and Forest Planning Process.

(a) *General planning approach.* The NEPA environmental analysis process will be included in the process for development of a regional or forest plan. Except where the planning process requires additional action, a single process will be used to meet the planning requirements and the NEPA process. The planning process adapts to changing conditions by identifying public issues, management concerns, and use and development opportunities. It consists of a systematic set of interrelated actions which include at least those set forth in paragraphs (b) through (k), of this section that lead to management direction. Planning actions, in addition to those in this section may be necessary in particular situations. Some actions may occur simultaneously, and it may be necessary to repeat an action as additional information becomes available.

(b) *Identification of issues, concerns, and opportunities.* The interdisciplinary team will identify and evaluate public issues, management concerns, and resource use and development opportunities, including those identified through public participation activities and coordination with other Federal agencies, State and local governments, and Indian tribes throughout the planning process. All public issues and management concerns are investigated and evaluated in order of their apparent importance. The responsible official will determine the major public issues, management concerns, and use and development opportunities to be addressed in the planning process.

(c) *Planning criteria.* Criteria will be prepared to guide the planning process and management direction. Process criteria may apply to collection and use of inventory data and information, analysis of the management situation, and the design and formulation of alternatives. Decision criteria will be developed and used to evaluate alternatives and to select one alternative to serve as the proposed plan. All criteria, including any revisions, will be developed by the interdisciplinary team and approved by the responsible official. Generally, criteria will be based on:

(1) Laws, executive orders, regulations, and Forest Service Manual policy;

(2) Goals and objectives in the Program and regional plans;

(3) Recommendations and assumptions developed from public issues, management concerns, and resource use and development opportunities;

(4) The plans and programs of other Federal agencies, State and local governments and Indian tribes;

(5) Ecological, technical and economic factors;

(6) Guidelines for economic analysis practices, including standards for benefits and costs, and the discount rate of interest will be established by the Chief, Forest Service, and become effective within one year after final publication of these planning rules in the Federal Register; and

(7) The resource management standards and guidelines in § 219.13.

(d) *Inventory data and information collection.* Each responsible official will obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative responsibility, and will assure that the interdisciplinary team has access to the best available data, which may require that special inventories or studies be prepared. The interdisciplinary team will collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made. Existing data will be used in planning unless such data is inadequate. Data and information needs may vary as planning problems develop from identification of public issues, management concerns, and resource use and development opportunities. Acquisitions of new data and information will be scheduled and planned as needed. Methods used to gather data will be consistent with those used to monitor consequences of activities resulting from planning and management. Data will be stored for ready retrieval and comparison and periodically will be evaluated for accuracy and effectiveness. Common data definitions and standards to assure uniformity of information between all planning levels will be established by the Chief, Forest Service. As information is recorded using common data definitions and standards, it will be applied in any subsequent planning process. Information developed from common data definitions and standards will be used in the preparation of the 1990, and subsequent Assessments and Programs.

(e) *Analysis of the management situation.* The analysis of the management situation is a determination of the ability of the planning area covered by the Regional or Forest Plan to supply goods and services in response to society's demand for those goods and services. The analysis will display the capability to supply outputs and uses, and projected demands for the outputs or uses over time. It will identify any special conditions or situations which involve hazards to the resources of the planning area and their relationship to proposed and possible actions being considered. The analysis will determine:

(1) Ranges of various goods, services and uses that are feasible under existing conditions at various levels of management intensity;

(2) Projections of demand, using best available techniques, with both price and non-price information which, in conjunction with supply cost information, will be used to evaluate the level of goods and services that maximizes net public benefits; to the extent possible, demand will be assesed as a price-quantity relationship;

(3) Potential to resolve public issues and management concerns;

(4) Technical, economic, and environmental feasibility of providing the levels of goods, services, and uses

resulting from assigned goals and objectives; and

(5) The need, as a result of this analysis, to establish or change management direction.

(f) *Formulation of alternatives.* A reasonable range of alternatives as provided for in paragraphs (1) and (2) of this paragraph, will be formulated by the interdisciplinary team to provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during this planning process. Alternatives will be described in draft and final environmental impact statements.

(1) Alternatives will reflect a range of resource outputs and expenditure levels. In formulating these alternatives, the following criteria will be met:

(i) Each alternative will be capable of being achieved;

(ii) A no-action alternative will be formulated, that is the most likely condition expected to exist in the future if current management direction would continue unchanged;

(iii) Each alternative will provide for the orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative.

(iv) Each identified major public issue and management concern will be addressed in one or more alternatives; and

(v) Each alternative will represent to the extent practicable the most cost efficient combination of management practices examined that can meet the objectives established in the alternative;

(2) Each alternative will state at least:

(i) The condition and uses that will result from long-term application of the alternative,

(ii) The goods and services to be produced, and the timing and flow of these resource outputs;

(iii) Resource management standards and guidelines; and

(iv) The purposes of the managment direction proposed.

(g) *Estimated effects of alternatives.* The interdisciplinary team will estimate and display the physical, biological, economic, and social effects of implementing each alternative including how the plan responds to the range of goals and objectives assigned to it from the RPA Program. These effects will include at least the following:

(1) The expected outputs for the planning periods, including appropriate marketable goods and services, as well as non-market items, such as protection and enhancement of soil, water and air, and preservation of aesthetic and cultural resource values;

(2) The relationship between local, short-term uses of the renewable resources and the maintenance and enhancement of long-term productivity;

(3) The adverse environmental effects which cannot be avoided;

(4) Resource commitments that are irreversible and irretrievable;

(5) Effects on minority groups and civil rights;

(6) Effects on prime farmlands, wetlands and flood plains;

(7) The relationship of expected outputs to the forest goals given in the current regional plan;

(8) The energy requirements and consideration of potential effects of various alternatives; and

(9) Direct and indirect benefits and costs, estimated in accordance with paragraph (c)(6) of this section, analyzed in sufficient detail to:

(i) Determine the expected real-dollar investment, administrative and operating costs of the plan;

(ii) Estimate the real-dollar value of all outputs attributable to each plan alternative to the extent that dollar values can be assigned to nonmarket goods and services using physical outputs or relative indices of value when such values may not be reasonably assigned and;

(iii) Evaluate the economic effects of alternatives, including the distribution of goods and services, the payment of taxes and charges, receipt shares, payments to local government, and income and employment in affected communities.

(h) *Evaluation of alternatives.* The interdisciplinary team will evaluate the significant physical, biological, social, economic and environmental design effects of each management alternative according to the planning decision criteria. The evaluation will include a comparative analysis of the management alternatives and will compare economic efficiency and distributional aspects, outputs of goods and services, and protection and enhancement of environmental resources. The responsible official will review the interdisciplinary team's evaluation and will recommend a preferred alternative or alternatives to be identified in the draft environmental impact statement.

(i) *Selection of alternative.* After publication of the draft environmental impact statement, the interdisciplinary team will evaluate public comments and, as necessary, revise the appropriate alternative. The responsible official will recommend a selected alternative for the final environmental impact statement using the decision criteria developed pursuant to paragraph (c) of this section. The official will document the selection with a description of the benefits, relative to other alternatives as described in paragraph (h) of this section.

(j) *Plan implementation.* During the implementation of each plan the following requirements, as a minimum, will be met:

(1) The responsible official will assure that annual program proposals and implemented projects are in compliance with the plan;

(2) Program budget allocations meet the objectives and are consistent with all applicable standards and guidelines specified in the plan; and

(3) Plan implementation is in compliance with §§ 219.9(d) and 219.11(d).

(k) *Monitoring and evaluation.* At intervals established in the plan, management practices will be evaluated on a sample basis to determine how well objectives have been met and how closely management standards and guidelines have been applied. The results of monitoring and evaluation may be used to analyze the management situation during revision of the plan as provided in paragraphs (k) (1), (2) and (3) of this section.

(1) The plan will describe the following monitoring activities:

(i) The actions, effects, or resources to be measured, and the frequency of measurements;

(ii) Expected precision and reliability of the monitoring process; and

(iii) The time when evaluation will be reported.

(2) Evaluation reports will contain for each monitored management practice at least a quantitative estimate of performance comparing outputs and services and their costs with those projected by the plan and documentation of evaluated measured effects.

(3) Based upon the evaluation reports, the responsible official will make changes in management direction, or revise or amend the plan as necessary to meet the goals and objectives.

### § 219.6 Interdisciplinary Approach.

(a) A team representing several disciplines will be used at each level of planning to insure coordinated planning which addresses outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness opportunities. The team is to coordinate and integrate planning activities consistent with the principles of the Multiple-Use Sustained-Yield Act of 1960 and § 219.1 of this subpart. Through interactions among its members, the team will integrate knowledge of the physical,

biological, economic and social sciences, and environmental design arts in the planning process. Team functions include, but are not limited to:

(1) Assessing the problems and resource use and development opportunities associated with providing of goods and services;

(2) Obtaining the public's views about possible decisions;

(3) Coordinating planning activities within the Forest Service and with local, State and other Federal agencies;

(4) Developing the land and resource management plan and associated environmental impact statement pursuant to the planning process;

(5) Giving the responsible official an integrated perspective on land and resource management planning; and

(6) Establishing monitoring and evaluation standards and requirements for planning and management activities.

(b) The team will be composed of Forest Service personnel who collectively represent diverse specialized areas of professional and technical knowledge about natural resource management applicable to the area being planned. The team will consider problems collectively, rather than separating them along disciplinary lines. The team is encouraged to consult persons other than Forest Service employees when required specialized knowledge does not exist within the team itself.

(c) The responsible official, in appointing team members, will determine and consider the qualifications of each team member on the basis of the complexity of the issues and concerns to be resolved through the plan. Each team member will, as a minimum, either have successfully completed a course of study in a college or university leading to a bachelor's or higher degree in one or more specialized areas of assignment or have recognized expertise and experience in professional investigative, scientific, or other responsible work in specialities which members represent. In addition to technical knowledge in one or more resource specialities, members should possess other attributes which enhance the interdisciplinary process that, as a minimum, should include:

(1) An ability to solve complex problems;

(2) Skills in communication and group interaction;

(3) Basic understanding of land and natural resource planning concepts, processes, and analysis techniques; and

(4) The ability to conceptualize planning problems and feasible solutions.

(d) The responsible official will appoint a leader of the interdisciplinary team. Team leadership should be assigned to individuals possessing both a working knowledge of the planning process and the ability to communicate effectively with team members. The team leader will coordinate the specialists, focusing their attention on team goals.

### § 219.7 Public Participation.

(a) Because the land and resource management planning process determines how the lands of the National Forest System are to be managed, the public is encouraged to participate throughout the planning process. The intent of public participation is to:

(1) Ensure that the Forest Service understands the needs and concerns of the public;

(2) Inform the public of Forest Service land and resource planning activities;

(3) Provide the public with an understanding of Forest Service programs and proposed actions;

(4) Broaden the information base upon which land and resource management planning decisions are made; and

(5) Demonstrate, that public issues and inputs are considered and evaluated in reaching planning decisions.

(b) Public participation in the preparation of draft environmental impact statements for planning begins with the publication of a notice of intent in the Federal Register. After this publication, all public participation for land and resource management planning will be coordinated with that required by the NEPA and its implementing regulations.

(c) Public participation, as deemed appropriate by the responsible official, will be used early and often throughout the development, revision, and significant amendment of plans. Public participation activities will begin with a notice to the news media, which includes as appropriate the following information:

(1) The description of the proposed planning action;

(2) The description and map of the geographic area affected;

(3) The issues expected to be discussed;

(4) The kind, extent, and method(s) of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated, for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to the planning process.

(d) Public participation activities should be appropriate to the area and people involved. Means of notification should be appropriate to the level of planning. Public participation activities may include, but are not limited to, requests for written comments, meetings, conferences, seminars, workshops, tours, and similar events designed to foster public review and comment. To ensure effective public participation, the objectives of participation activities will be defined beforehand by the interdisciplinary team. The Forest Service will state the objectives of each participation activity to assure that the public understands what type of information is needed and how this information relates to the planning process. The responsible official and interdisciplinary teams will consult and be guided by Forest Service Handbook 1626.

(e) Public comments will be analyzed individually, and by type of group and organization to determine common areas of concern and geographic distribution. The results of this analysis will be evaluated to determine the variety and intensity of viewpoints about ongoing and proposed planning, and management standards and guidelines. Conclusions about comments will be used to the extent practicable in decisions that are made.

(f) The primary purpose of public participation is to broaden the information base upon which planning decisions are made. Public participation activities also will help in monitoring and evaluation of implemented plans. Suitable public participation formats, requirements, and activities will be determined by the responsible official.

(g) All scheduled public participation activities will be documented by a summary of the principal issues discussed, comments made, and a register of participants.

(h) At least 30 days' public notice will be given for public participation activities associated with the development of national or regional plans. At least 15 days' public notice will be given for activities associated with forest plans. Any notice requesting written comments on national and regional planning will allow at least 90 calendar days for responses. A similar request about forest planning will allow at least 30 calendar days for responses.

(i) A list of individuals and groups known to be interested in or affected by the plan will be maintained. They will be notified of public participation activities.

(j) The responsible official, or his representative, will attend or provide for adequate representation at public participation activities.

(k) Copies of approved plans will be available for public review, as follows:

(1) The Assessment and the Program will be available at national headquarters, each regional office, each forest supervisor's office, and each district ranger's office;

(2) The regional plan will be available at national headquarters, that regional office and regional offices of contiguous regions, each forest supervisor's office of forests within and contiguous to that region, and each district ranger's office in that region;

(3) The forest plan will be available at the regional office for that forest, that forest supervisor's office and forest supervisors' offices contiguous to that forest, each district ranger's office in that forest, those district rangers' offices in other forests that are contiguous to that forest, and at least one additional location determined by the forest supervisor, which will offer convenient access to the public; and

(4) The above plans may be made available at other locations convenient to the public.

(l) Documents considered in the development of plans will be available at the office where the plans were developed.

(m) Upon issuance of a draft environmental impact statement on a plan, revision, or significant amendment, and concurrent with the public participation activities of this section, the public will have a 3-month period to review the statement for the proposed plan, revision, or significant amendment. During that time, additional public participation activities will take place to review the actions proposed in the draft environmental impact statement.

(n) Fees for reproducing requested documents will be charged according to the Secretary's Fee Schedule (7 CFR Part 1, Subpart A, Appendix A).

### § 219.8 Coodination of Public Planning Efforts.

(a) Efficient management of the resources of the National Forest System results from planning that is coordinated among all levels of government, including other Federal agencies, State and local governments, and Indian tribes. Such coordination ensures that government objectives, policies, and programs for resource management are compatible to the extent possible. Therefore, the Forest Service will coordinate its national, regional, and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible official, through the interdisciplinary team, will coordinate Forest Service planning with land and resource management planning of other affected government entities and Indian tribes to ensure that planning includes:

(1) Recognition of the objectives of other Federal, State and local governments, and owners of intermingled and adjacent private lands, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and

(4) Where conflicts are identified, consideration of alternatives for their resolution.

(c) The responsible official will give notice of the preparation, revision, or significant amendment of a land and resource management plan, along with a general schedule of anticipated planning actions, to the State Clearinghouse (OMB Circular A-95) for circulation among State agencies. The same notice will be mailed to all Tribal or Alaska Native leaders whose tribal lands may be impacted, and to the heads of county boards for the counties that are involved. These notices will be issued simultaneously with the public notice required in § 219.7(b).

(d) To facilitate coordination with State governments, regional foresters will seek agreements with Governors or their designated representatives on procedural measures such as exchanging information, providing advice and participation, and time frames for receiving State government input and review. If an agreement is not reached, the regional forester will provide an opportunity for Governor and State agency review, advice, and suggestion on guidance that the regional forester believes could affect or influence State government programs.

(e) The responsible official in developing land and resource plans, will meet with the designated State official (or designee), representatives of other Federal agencies and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences will also be held after public issues and management concerns have been identified and prior to recommending the selected alternative. Such conferences may be held in conjunction with other public participation activities, provided that the opportunity for government officials to participate in the planning process is not thereby reduced.

(f) The responsible official will review the planning and land use policies of other Federal agencies, State and local governments and Indian tribes. The intensity of the review will be appropriate to the planning level and requirements of the envisioned plan. This review will include, but not be limited to, plans affecting renewable natural resources, minerals, community and economic development, land use, transportation, water and air pollution control, cultural resources, and energy. The planning records will document this review.

(g) The responsible official, in the development of forest plans and to the extent feasible, will notify the owners of lands that are intermingled with, or dependent for access upon, national forest lands. Planning activities should then be coordinated to the extent feasible with these owners. The results of this coordination will be included in the plan as part of the review required in paragraph (f) of this section.

(h) The responsible official, in developing the forest plan, will seek input from other Federal, State and local governments and universities, to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(i) A program of monitoring and evaluation will be conducted that includes consideration of the effects of national forest management on land, resources, and communities adjacent to or near the national forest being planned and the effects upon national forest management of activities on nearby lands managed by other Federal or government agencies or under the jurisdiction of local governments.

### § 219.9 Regional Planning Procedure.

(a) *Regional plan.* Regional planning will provide national forests (forest planning areas) with goals and objectives, regional issue resolution, and program coordination for National Forest System, State and Private Forestry, and Research. A plan will be developed for each administratively designated region in the National Forest System. The preparation of a regional plan, revision, or significant amendment will comply with the requirements of the planning process established in §§ 219.5 and 219.10 and this section.

(b) *Responsibilities.* The Chief, Forest Service, will establish agency-wide policy for regional planning and approve all regional plans, revisions, or

significant amendments. The regional forester will be responsible for the preparation of the regional plan, and revisions or significant amendments to the regional plan. The regional interdisciplinary team will develop a regional plan using the process established in § 219.5 which shall include the steps in paragraphs (b) (1) and (2) of this section.

(1) A draft environmental impact statement will be prepared, describing the proposed plan, revision, or significant amendment. A notice of intent to prepare this statement will be issued in the Federal Register. The draft statement will identify a preferred alternative. Beginning at the time of notification of availability of the draft environmental impact statement in the Federal Register, the statement will be available for public comment for at least 90 days at convenient locations in the vicinity of the lands covered by the plan, revision, or significant amendment. During this period, and in accordance with the provisions in § 219.7, the responsible official will publicize and hold public participation activities as deemed appropriate for adequate public input.

(2) A final environmental impact statement will be prepared, and after the regional forester has reviewed and concurred in the statement, the regional forester will recommend to the Chief, Forest Service that it be filed with the Environmental Protection Agency. At least 30 days are required between the date of notice of filing of the final environmental impact statement and the decision to implement actions specified in the plan, revision, or significant amendment. The plan, revision, or significant amendment will be based on the selected alternative.

(c) Plan approval. The Chief, Forest Service, will review the proposed plan, revision, or significant amendment and the final environmental impact statement and take either of the actions in paragraphs (c)(1) and (2) of this section.

(1) Approve the plan. If approved, the plan will not become effective until at least 30 days after publication of the notice of the filing of the final environmental impact statement. The Chief, Forest Service, will attach to the final environmental impact statement a concise public record of decision which documents the approval. The record of decision will accomplish the following:

(i) State the decision;

(ii) Identify all alternatives considered in making the decision on the plan, revision, or significant amendment;

(iii) Specify the selected alternative;

(iv) Identify and discuss all factors considered by the Forest Service in making the planning decision, including how such factors entered into its decision; and

(v) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adapted, and, if not, why they were not.

(2) Disapprove the plan, and return it to the regional forester with a written statement of the reasons for disapproval. The Chief, Forest Service may also specify a course of action to be undertaken by the regional forester in order to remedy the deficiencies, errors, or omissions of the plan or environmental impact statement.

(3)(i) The approval or disapproval of a regional plan, revision, or significant amendment, or reconsideration under paragraph (ii) of this paragraph, is not subject to review under § 211.19 of this chapter or any other administrative appeal procedure. This exclusion does not apply to appeals or decisions to be taken under the regional plan on the grounds of nonconformity or to appeals of decisions taken under the plan which are appealable grievances under § 211.19 of this chapter.

(ii) Any person may request the Chief, Forest Service, to reconsider the decision to approve or disaprove a regional plan, revision, or significant amendment. A written request for reconsideration must be filed within 45 days of the time of the Chief's decision and must be accompanied by a written statement giving the reasons why the decision to approve or disapprove is erroneous and any factual information necessary to support these reasons. A written decision on the request for reconsideration will be made within 30 days of the receipt of the request and will state the reasons for the decision reached on the request.

(iii) Any person, either at the time of requesting reconsideration or prior to filing such a request, may request the Chief, Forest Service, to stay the decision approving or disapproving the regional plan, revision, or significant amendment providing a showing is made that, without a stay, implementation will result in irreversible harm or will have an immediate direct and adverse effect on the requesting party.

(d) *Conformity.* The regional forester will manage the national forest lands under his or her jurisdiction in accordance with the regional plan. The regional forester or area director will assure that all State and Private Forestry programs planned with the States or other governmental agencies are coordinated with the regional plan. The research station director will use the regional plan to help identify research needs for National Forest System lands. Differences between annual budget proposals and actual funding allocations may require the regional forester to make changes in scheduling. When each regional plan is approved, each forest plan in that region will be revised or amended to bring it into conformity as soon as practicable. When each regional plan is revised or amended the affected forest plans will be revised or amended to conform as soon as practicable.

(e) *Amendment.* The regional forester may amend the regional plan through an environmental analysis which will be used to determine the significance of proposed amendments. If the analysis indicates the preparation of an environmental impact statement is necessary, the amending process will follow the same procedure as used in the preparation of the plan. If the amendment is determined not to be significant, it may be implemented by the responsible official after public notice. The regional plan will be reviewed for possible amendment in conjunction with the development of the Assessment and Program or whenever the funded and implemented program deviates significantly from the 5-year levels specified in the regional plan.

(f) *Revision.* The regional forester will determine by an analysis of the management situation whether a revision is necessary because conditions or the demands of the public in the region have changed significantly. Revision will not become effective until considered and approved in accordance with the requirements for the development and approval of a regional plan.

(g) *Planning records.* The regional forester and the interdisciplinary team will develop and maintain a system that records decisions and activities that result from the process of developing a regional plan, revision or significant amendment. This system will contain all planning records including a work plan to guide and manage planning, the precedures which were used in completing each planning action and the results of those actions. These records document the accomplishment of legal and administrative planning requirements. They include at least the draft environmental impact statement, final environmental impact statement, regional plan, and record of decision. The adequacy of the record system will be approved by the regional forester.

(h) *Regional plan content.* The following general format and content

outline is required for all regional plans. In addition, the regional forester may specify formats and require further content within the following outline appropriate to the planning needs of that region:

(1) A brief description of the major public issues and management concerns which are pertinent to the region, indicating the disposition of each issue or concern;

(2) A summary of the analysis of the regional management situation, including a brief description of the existing management situation, demand and supply projections for resource commodities and services, production potentials, and resource use and development opportunities;

(3) Description of management direction including programs, goals and objectives;

(4) A distribution of regional objectives to each of the forest planning areas, and additional objectives added to reflect specific regional needs;

(5) Management standards and guidelines and those specific standards and guidelines listed in § 219.10(d);

(6) Description of the monitoring and evaluation necessary to determine and report achievements and effects;

(7) Appropriate references to information used in development of the regional plan; and

(8) The names of interdisciplinary planning team members, together with a summary of each member's qualifications and areas of expertise;

(i) *Monitoring and evaluation.* Monitoring and evaluation of planned actions and effects will be carried out in compliance with § 219.5(k). Monitoring and evaluation will include, but is not limited to:

(1) Management practices relating to regional or subregional programs;

(2) State and Private Forestry programs carried out in conjunction with states or other governmental agencies;

(3) Economic and social impact on regional publics;

(4) Resource outputs or environmental impacts which relate to areas more widespread than national forests or States;

(5) Research programs which are related to other research activities or ongoing management practices on a regional scale; and

(6) National Forest System programs.

**§ 219.10 Regional Planning Actions.**

(a) The regional interdisciplinary team, as directed by the regional forester, will follow the process and procedures established in §§ 219.5 through 219.9 in preparing the regional plan, revision, or significant amendment. The appropriate planning actions of the regional planning process will be guided by at least the criteria provided in paragraphs (b) through (g) of this section. Additional planning criteria may be found in the guidelines for managing specific renewable resources set forth in the Forest Service Manual and Handbooks.

(b) In addition to public issues and management concerns identified through public participation and coordination, each regional plan will address issues and concerns referred from national or forest planning. Some management concerns that should be considered in regional and in forest planning are the needs to:

(1) Provide goods and services efficiently;

(2) Produce timber and wood fiber;

(3) Manage and utilize range resources and improve range grazing;

(4) Manage fire to improve and protect resources;

(5) Protect resources from disease, pests and similar threats;

(6) Enhance water quality and quantity, soil productivity, and restore watershed conditions;

(7) Adjust landownership as needed to support resource management goals;

(8) Provide various recreation options;

(9) Maintain or improve fish and wildlife habitats;

(10) Improve critical and essential habitats of threatened or endangered plant and animal species;

(11) Assess probabilities of mineral exploration and development for immediate and future needs, and consider non-renewable resources in the mangement of renewable natural resources;

(12) Construct, operate, and maintain transportation facilities;

(13) Identify, protect, and enhance the visual quality;

(14) Require corridors to the extent practicable, to minimize adverse environmental impacts caused by the proliferation of separate rights-of-way;

(15) Discover, manage, protect, and interpret cultural resource values which are qualified or may qualify for inclusion in the National Register of Historic Places;

(16) Identify typical examples of important botanic, aquatic, and geologic types, and protect them through establishment of research natural areas; and

(17) Provide for various wilderness management options.

(c) Consistent with regional and forest resource capabilities, regional plans will implement the goals and objectives of the RPA Program by establishing regional policies and goals, assigning resource production objectives to each forest area to be covered by a Forest plan, and issuing needed guidelines for resolving the major public issues and management concerns which are identified through public participation and coordination activities. Information developed in regional plans will be made available to the National level Assessment and Program activity.

(d) Each regional plan will establish standards and guidelines for:

(1) Prescribing according to geographic areas, forest types, or other suitable classifications, appropriate systems of silviculture to be used within the region;

(2) The maximum size, dispersal, and size variation of tree openings created by the application of even-aged managment and the state of vegetation that will be reached before a cutover area is no longer considered an opening, using factors enumerated in § 219.13(d);

(3) The biological growth potential to be used in determining the capability of land for timber production as required in § 219.12(b)(1)(ii);

(4) Defining the management intensity and utilization standards to be used in determining harvest levels for the region;

(5) Recommended transportation corridors and associated standards for forest planning, such as standards for corridors, for transmission lines, pipelines, and water canals. The designation of corridors is not to preclude the granting of separate rights-of-way over, upon, under, or through the public lands where the authorized official determines that confinement to a corridor is not appropriate;

(6) Identification of potential uses of available air quality increments (42 U.S.C. 7473(b)) and protection of the portion of the increment needed to implement forest plans; and

(7) Provision of a unit of measure for expressing mean annual increment as required in § 219.12(d)(1)(ii)(C).

(e) Public participation and coordination activities will be adapted to the circumstances of regional planning. Particular efforts will be made to involve regional and national representatives of interest groups. Coordination will stress involvement with appropriate Federal agencies, State and local governments, and Indian tribes. Regional foresters will seek agreements with Governors, or their designated representatives, on procedures for coordination in accordance with § 219.6(d).

(f) Data for regional planning will be based principally on information from forest planning, with other data provided by the States, other Federal

agencies, and private sources. Very little new data will be gathered through land and resource inventories. Data and information standards and guidelines established nationally will be followed in structuring and maintaining required data.

(g) The regional analysis of the management situation will, as appropriate, consider results of each forest's analysis of the management situation for that region.

**§ 219.11 Forest Planning Procedure.**

(a) *Forest Plan.* The preparation of a forest plan, revision, or significant amendment will comply with the requirements of the planning process established in §§ 219.5 and 219.12 and this section.

(b) *Responsibilities.* The forest supervisor and the interdisciplinary team are responsible for the activities set forth in paragraphs (b) (1) and (2) of this section.

(1) *Forest supervisor.* The forest supervisor has overall responsibility for the preparation and implementation of the forest plan and appoints and supervises the interdisciplinary team.

(2) *Interdisciplinary team.* The team will implement the public participation and coordination activities. The team will continue to function even though membership may change, and will monitor and evaluate planning results and recommended revisions and amendments. The interdisciplinary team will develop a forest plan, revision, or significant amendment using the planning process established in § 219.5, including the steps in paragraphs (b)(2)(i) and (ii) of this section:

(i) A draft environmental impact statement will be prepared, describing the proposed plan, revision, or significant amendment. A notice of intent to prepare this statement will be issued in the Federal Register. The draft statement will identify a preferred alternative. Beginning at the time of the publication of the notice of availability notification in the Federal Register, the statement will be available for public comment for at least 3 months, at convenient locations in the vicinity of the lands covered by the plan, revision, or significant amendment. During this period, and in accordance with the provisions in § 219.7, the responsible official will publicize and hold public participation activities as deemed appropriate for adequate public input.

(ii) A final environmental impact statement will be prepared, and after the forest supervisor has reviewed and concurred in the statement, the forest supervisor will recommend to the regional forester that it be filed with the Environmental Protection Agency. At least 30 days are required between the date of notice of filing of the final environmental impact statement and the decision to implement actions specified in the plan, revision, or significant amendment. The plan, revision, or significant amendment will be based on the selected alternative.

(c) *Approval process.* The regional forester will review the proposed plan, revision, or significant amendment and the final environmental impact statement and take one of the actions in paragraphs (c)(1) through (3) of this section.

(1) Approve the plan. If approved, the plan will not become effective until at least 30 days after publication of the notice of the filing of the final environmental impact statement. At the time of filing the FEIS with the Environmental Protection Agency, the regional forester will attach to the Final Environmental Impact Statement a concise public record of decision which documents the approval. The record of decision will accomplish the following:

(i).State the decision;

(ii) Identify all alternatives considered in making the decision on the plan, revision, or significant amendment;

(iii) Specify the selected alternative;

(iv) Identify and discuss relevant factors considered by the Forest Service in making the planning decision, including how such factors entered into its decisions; and

(v) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and, if not, why they were not.

(2) Disapprove the plan which will be returned to the forest supervisor with a written statement of the reasons for disapproval. The regional forester may also specify a course of action to be undertaken by the forest supervisor in order to remedy the deficiencies, errors, or omissions of the plan or Environmental Impact Statement.

(3) Transmit to the Chief, Forest Service, for approval or disapproval, if the selected harvest schedule is not the base timber harvest schedule for the designated forest planning area as required in § 219.12(d)(2).

(4)(i) Persons who participated in the planning process, or who can show good reason why there were unable to participate, and who have an interest which is, or may be adversely affected by a decision to approve or disapprove a forest plan, revision, or significant, amendment, may request a review of that decision. Intermediate decisions made during the planning process and prior to the approval or disapproval decision are not reviewable. If the party requesting review participated in the planning process, administrative review is limited to those issues which the requesting party raised during participation in the planning process. Participation in the planning process means direct and documented involvement with the responsible official or the interdisciplinary team in the planning process described in § 219.5 of this subpart. Except as provided in this paragraph, the provisions and procedures which apply to administrative review under § 211.19 of this chapter apply to the review of decisions approving or disapproving a forest plan, revision, or significant amendment.

(ii) The reviewing officer will determine whether the deficiencies, errors, or omissions, found in the plan, revision, or significant amendment, are of such a nature as to require reconsideration. If reconsideration is necessary, the Chief, Forest Service, will remand the plan, revision, or significant amendment, to the Regional Forester with instructions as to how to proceed in the reconsideration.

(iii) Any person, either at the time of filing a request for review, or prior to filing such a request, may request the reviewing officer to stay a decision approving or disapproving the forest plan, revision, or significant amendment, providing a showing is made that, without a stay, implementation will result in irreversible action or irreparable harm or will have an immediate, direct and adverse effect on the requesting party.

(d) *Conformity.* As soon as practicable after approval of the plan, revision, or significant amendment, the forest supervisor will ensure that, subject to valid existing rights, all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of affected lands are in conformity with the plan. All subsequent administrative activities affecting such lands, including budget proposals, will be in compliance with the plan. The forest supervisor may change proposed scheduling to respond to minor differences between planned annual budgets and appropriated funds. Such scheduled changes will be considered an amendment to the forest plan, but will not require preparation of an environmental impact statement unless the changes significantly alter the relationship between levels of multiple-use goods and services projected under planned budget proposals as compared to those levels projected with actual appropriations. An environmental impact statement will be prepared if the

scheduling changes will result in significant adverse environmental impacts not taken into account in an existing environmental impact statement.

(e) *Amendment.* The responsible official may amend a plan through an environmental analysis or through the procedures established for the preparation and approval of the forest plan. Such an amendment will be deemed significant if the analysis indicates the need to prepare an environmental impact statement. If such a need is indicated, the amending process will follow the same procedure as in the preparation of the plan. If, based on the environmental analysis, the amendment is determined not to be significant, it may be implemented by the forest supervisor following appropriate public notification.

(f) *Revision.* A forest plan will be revised at least every 10 years, or more frequently whenever the forest supervisor determines that conditions or the demands of the public in the area covered by the plan have changed significantly. The interdisciplinary team may, through the monitoring and evaluation process, recommend a revision of the forest plan at any time. Revisions are not effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. The forest supervisor will review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have changed significantly.

(g) *Planning records.* The forest supervisor and interdisciplinary team will develop and maintain a system that records decisions and activities that result from the process of developing a forest plan, revision, or significant amendment. Records will be maintained that support analytical conclusions and alternative plans made by the team and approved by the forest supervisor throughout the planning process. Such supporting records provide the basis for the development of, revision, or significant amendment to the forest plan and associated environmental documents.

(h) *Forest plan content.* The forest plan is the selected alternative described in the Final Environmental Impact Statement. The plan will contain the following:

(1) A brief description of the major public issues and management concerns which are pertinent to the forest, indicating the disposition of each issue or concern;

(2) A summary of the analysis of the management situation, including a brief description of existing management situations, demand and supply conditions for resource commodities and services, production potentials, and use and development opportunities;

(3) Long-range policies, goals, and objectives, and the specific management prescriptions planned; to meet the policies and to achieve the multiple-use goals and objectives;

(4) Proposed vicinity, timing, standards and guidelines for proposed and probable management practices;

(5) Monitoring and evaluation requirements which are pertinent at the forest level;

(6) Appropriate references to information used in development of the forest plan; and

(7) Names of the interdisciplinary planning team members, together with a summary of each member's qualifications and primary responsibilities or contributions to the forest planning effort.

(i) *Monitoring and evaluation.* Monitoring and evaluation of planned actions and effects will be carried out in compliance with § 219.5(k) and paragraphs (i) (1) through (3) of this section. In addition, management practices associated with each of the resources planned will be evaluated with reference to the standards and guidelines contained in the forest plan through monitoring on an appropriate sample basis. Methods used to monitor consequences of activities resulting from planning and management practices will be consistent with those used to gather data and information.

(1) Monitoring requirements in the forest plan will include descriptions of:

(i) Activities, practices and effects that will be measured and the frequency of measurements;

(ii) Expected precision and reliability of the monitoring process; and

(iii) The time at which evaluation reports will be prepared.

(2) An evaluation report will be prepared for management practices monitored and will contain at least the following:

(i) A quantitative estimate of performance comparing outputs and services with those projected by the forest plan;

(ii) Documentation of measured effects, including any change in productivity of the land;

(iii) Recommendations for changes;

(iv) A list of needs for continuing evaluation of management systems and for alternative methods of management; and

(v) Unit costs associated with carrying out the planned activities as compared with unit costs estimated in the forest plan.

(3) Based upon the evaluation reports, the interdisciplinary team will recommend to the forest supervisor such changes in management direction, revisions, or amendments to the forest plan as deemed necessary.

### § 219.12 Forest Planning Actions.

(a) In the preparation of the proposed forest plan, revision, or significant amendment, the interdisciplinary team, as directed by the forest supervisor, will follow the planning process established in §§ 219.5 through 219.8, 219.11, and in this section. The criteria in paragraphs (b) through (m) of this section provide the minimum requirements to be considered if appropriate for the forest being planned. Additional planning criteria may be found in the guidelines for managing specific renewable resources set forth in the Forest Service Manual and Handbooks.

(b) Each forest plan will identify lands available, capable, and suitable for timber production and harvesting during the planning process in accordance with the planning criteria in paragraphs (1) through (4) of this paragraph.

(1) During the analysis of the management situation, data on all National Forest System lands will be reviewed and those lands meeting all of the requirements of paragraphs (b)(1) (i) through (iv) of this section will be tentatively identified as available, capable and suitable for timber production. Those lands that fail to meet any of these requirements will be designated as not suited for timber production.

(i) The land has not been legislatively withdrawn or administratively withdrawn by the Secretary or the Chief, Forest Service, from timber production.

(ii) The biological growth potential for the land is equal to or exceeds the minimum standard for timber production defined in the regional plan.

(iii) Technology is available that will ensure timber production from the land without irreversible resource damage to soils, productivity, or watershed conditions.

(iv) There is reasonable assurance that such lands can be adequately restocked as provided in § 219.13(h)(3).

(2) Lands that have been tentatively identified as available, capable, and suitable for timber production in paragraph (1) above will be further reviewed and assessed prior to formulation of alternatives to determine the costs and benefits for a range of

management intensities for timber production. For the purpose of analysis, the Forest will be stratified into categories of land with similar management costs and returns. The stratification should consider appropriate factors that influence the costs and returns such as physical and biological conditions of the site and transportation. This analysis will compare the direct costs of growing and harvesting trees to the anticipated receipts to the government, including capital expenditures required by timber production, in accordance with § 219.5 and paragraphs (i) through (iii) below and will identify the management intensity for timber production for each category of land, which results in the largest excess of discounted benefits less discounted costs.

(i) Direct benefits are expressed by expected gross receipts to the government. Such receipts will be based upon expected stumpage prices from timber harvest considering future supply and demand situation for timber, timber production goals of the Regional plan, and § 219.5(c)(6).

(ii) Direct costs include the anticipated investments, maintenance, operating, and management and planning costs attributable to timber production activities, including mitigation measures necessitated by the impacts of timber production.

(iii) Economic analysis must consider costs and returns of managing the existing timber inventory in addition to long-term potential yield.

(3) During formulation and evaluation of each alternative as required under § 219.5(f) and (g), combinations of resource management practices will be defined to meet management objectives for the various multiple uses including outdoor recreation, timber, watershed, range, wildlife and fish, and wilderness. The formulation and evaluation will consider the costs and benefits of alternative management intensities for timber production from paragraph (2) in accordance with § 219.5(f)(v). Lands will be tentatively identified as not suited for timber production if:

(i) Based upon a consideration of multiple-use objectives for the alternative, the land is proposed for resource uses that preclude timber production, such as wilderness;

(ii) Other management objectives for the alternative limit timber production activities to the point where silviculture standards and guidelines set forth in § 219.13 cannot be met; or

(iii) The lands are not cost-efficient in meeting Forest objectives including timber production for the alternative under consideration over the time period of the program.

(4) Selection among alternatives will be done in accordance with § 219.5(i). Lands identified as tentatively not suited in paragraph (b)(3) of this section will be designated as not suited for timber production in the selected alternative.

(c) When vegetation is altered by management, the methods, timing, and intensity of the practices determine the level of benefits that can be obtained from the affected resources. The vegetation management practices chosen for each vegetation type and circumstance will be defined in the forest plan with applicable standards and guidelines and the reasons for the choices. Where more than one vegetation management practice will be used in a vegetation type, the conditions under which each will be used will be based upon thorough reviews of technical and scientific literature and practical experience, with appropriate evaluation of this knowledge for relevance to the specific vegetation and site conditions. On National Forest System land, the vegetation management practice chosen will comply with the management standards and guidelines specified in § 219.13(c).

(d) The selected forest management alternative includes the timber harvest schedule which provides the allowable sale quantity. The harvest schedule of each alternative, including those which depart from base harvest schedules, will be formulated in compliance with § 219.5(c) and the criteria in paragraphs (1) and (2) of this paragraph.

(1) Alternatives will be formulated that include determinations of the quantity of the timber that may be sold during the planning period. These quantity determinations will be based on the principle of sustained yield and will meet the constraints set out in § 219.13. For each management alternative, the determination will include a calculation of the long-term sustained-yield capacity and the base harvest schedule and when appropriate, a calculation of timber harvest alternatives that may depart from the base harvest schedule as provided in paragraphs (i) through (iii) of this paragraph.

(i) For the base harvest schedules the planned sale and harvest for any future decade will be equal to or greater than the planned sale and harvest for the preceding decade of the planning periods provided that the planned harvest is not greater than the long-term sustained-yield capacity consistent with the management objectives of the alternative.

(ii) The determinations of the appropriate long-term sustained-yield capabilities, base harvest schedules, and departure alternatives to the base harvest schedule will be made on the basis of the guidelines which follows:

(A) For the long-term sustained-yield capacities and the base harvest schedules, assume an intensity of management and degree of timber utilization consistent with the goals, assumptions, and standards contained in, or used in the preparation of the current Program and regional plan. For the base harvest schedule, the management and utilization assumptions will reflect the projected changes in practices for the four decades contained in, or used in the preparation of the current Program and regional plan. Beyond the fourth decade, the assumptions will reflect those projected for the fourth decade of the regional plan;

(B) For alternatives with harvest schedules which depart from the corresponding base harvest schedule, assume an appropriate management intensity;

(C) In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period will generally have reached the culmination of mean annual increment of growth. Mean annual increment will be based on management intensities and utilization standards assumed in paragraphs (ii) (A) and (B) above and expressed as units of measure consistent with the regional plan. Exceptions to these standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; or for the removal of particular species of trees after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of a forest plan; and

(D) Each harvest schedule will provide for a forest structure that will enable perpetual timber harvest at the long-term sustained-yield capacity, and multiple-use objectives of the alternative.

(iii) Alternatives with harvest schedules which depart from the principles of paragraph (i) above and will lead to better attaining the overall objectives of multiple-use management will be considered and formulated when any of the following conditions are indicated:

(A) High mortality losses from any cause can be significantly reduced or prevented or forest age-class distribution can be improved, facilitating future sustained yield management;

(B) Implementation of the corresponding base harvest schedule would cause a substantial adverse impact upon a community in the economic area in which the forest is located;

(C) None of the alternatives already considered provides a timber harvest schedule that achieves the goals of the Program as provided in § 219.4(b).

(2) The harvest schedule of the management alternative selected in accordance with § 219.5(i) provides the allowable sale quantity (the quantity of timber that may be sold from the area of land covered by the forest plan) for the plan period. If the selected harvest schedule is not the base timber harvest schedule for the designated forest planning area, the forest plan will be transmitted to the Chief, Forest Service, for approval. The decision of the Chief may be appealed to the Secretary pursuant to the procedures in § 211.19 of this chapter.

(e) Lands reviewed for Wilderness designation under the review and evaluation of roadless areas conducted by the Secretary of Agriculture but not designated as wilderness or designated for further planning and lands whose designation as primitive areas has been terminated will be managed for uses other than wilderness in accordance with this subpart. No such area will be considered for designation as wilderness until a revision of the forest plan under § 219.11(f). When revising the forest plan, roadless areas of public lands within and adjacent to the forest, will be evaluated and considered for recommendation as potential wilderness areas, as provided in paragraphs (e) (1) and (2) of this paragraph.

(1) During analysis of the management situation the following areas will be designated for evaluation:

(i) All previously inventoried wilderness resources not yet designated;

(ii) Areas contiguous to existing wilderness, primitive areas, or administratively proposed wildernesses, regardless of which agency has jurisdiction for the wilderness or proposed wilderness.

(iii) Areas, regardless of size, that are contiguous to roadless and undeveloped areas in other Federal ownership that have identified wilderness potential; and

(iv) Areas designated by Congress for wilderness study, administrative proposals pending before Congress, and other legislative proposals pending which have been endorsed by the administration.

(2) Each area designated for evaluation under paragraph (1) above will be evaluated in terms of current national guidelines or, in their absence, by criteria developed by the interdisciplinary team with public participation. In the latter case, the criteria will include as a minimum:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, in respect to size, non-conforming use, land ownership patterns, and existing contractual agreements or statutory rights;

(iv) Proximity to other designated wilderness, and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species diversity, including the diversity of natural plant and animal communities of the forest planning area and the effects of such changes on the values for which wilderness areas were created.

(f) The forest plan will provide direction for the management of designated wilderness and primitive areas in accordance with the provisions of Part 293. In particular, it will:

(1) Provide for limiting and distributing visitor use of specific portions in accord with periodic estimates of the maximum levels of use that allow natural processes to operate freely and that do not impair the values for which wilderness areas were created; and

(2) Evaluate the extent to which wildfire, insect, and disease control measures may be desirable for protection of either the wilderness or adjacent areas and provide for such measures when appropriate.

(g) Fish and wildlife habitats will be managed to maintain viable populations of all existing native vertebrate species in the planning area and to maintain and improve habitat of management indicator species. To meet this goal, management planning for the fish and wildlife resource will meet the requirements set forth in paragraphs (1) through (7) of this paragraph and be guided by Chapter 2620, Forest Service Manual.

(1) The desired future condition of fish and wildlife, where technically possible, will be stated in terms both of animal population trends and of amount and quality of habitat.

(2) Management indicator species, vertebrate and/or invertebrate, will be identified for planning, and the reasons for their selection will be given. The species considered will include at least: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; and additional plant or animal species selected because their population changes are believed to indicate effects of management activities on other species of a major biological community or on water quality. On the basis of available scientific information, the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species will be estimated. Where appropriate, measures to mitigate adverse effects will be prescribed.

(3) Biologists from State fish and wildlife agencies and other Federal agencies will be consulted in order to coordinate planning with State plans for fish and wildlife.

(4) Access and dispersal problems of hunting, fishing, and other visitor uses will be considered.

(5) The effects of pest and fire management on fish and wildlife populations will be considered.

(6) Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(7) Critical habitat for threatened and endangered species will be determined, and measures will be prescribed to prevent the destruction or adverse modification of such habitat. Objectives will be determined for threatened and endangered species that will provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species.

(h) Identify lands suitable for grazing and browsing in accordance with criteria in paragraphs (1) through (3) of this paragraph and as guided by Chapter 2210, Forest Service Manual.

(1) The procedures used will include, but not be limited to, the following:

(i) Range condition and trend studies;

(ii) Records of estimated actual use by domestic livestock, feral animals and management indicator species of

wildlife, and estimated percentage utilization of key forage species;

(iii) An estimate of the capability of the rangelands to produce suitable food and cover for the management indicator species of wildlife; and

(iv) An estimate of the present and potential supply of forage for sheep, cattle, and feral animals.

(2) In the analysis of management situation, assess the capability of the planning area to produce forage without permanent impairment of the resources, considering the condition of the vegetation, statutory, and administrative withdrawals, characteristics of soil and slope, and accessibility to grazing and browsing animals.

(3) Alternative range management practices will consider:

(i) Grazing management systems;

(ii) Methods of altering successional stages for range management objectives, including vegetation manipulation as described in § 219.13(c);

(iii) Evaluation of pest problems, and availability of integrated pest management systems;

(iv) Possible conflicts or beneficial interactions among domestic, feral, and wild animal populations, and methods of regulating these;

(v) Physical facilities such as fences, water development, and corrals, necessary for efficient management;

(vi) Existing permits, cooperative agreements, and related obligations; and

(vii) Measures to protect, manage, and control wild free-roaming horses and burros as provided in Part 222, Subpart B of this chapter.

(i) A broad spectrum of dispersed and developed recreation opportunities in accord with identified needs and demands will be provided. Planning to achieve this will be governed by the goals of the regional plan, the requirements of paragraphs (1) through (8) of this section, and be guided by Chapter 2310, Forest Service Manual.

(1) Forest planning will identify:

(i) The physical and biological characteristics that make land suitable for recreation opportunities;

(ii) The recreational preferences of user groups; and the settings needed to provide quality recreation opportunities;

(iii) Recreation opportunities on the National Forest System lands.

(2) The supply of developed recreational facilities in the area of national forest influence will be appraised for adequacy to meet present and future demands.

(3) Alternatives will include consideration of establishment of physical facilities, regulation of use, and recreation opportunities responsive to current and anticipated user demands.

(4) In formulation and analysis of alternatives as specified in § 219.5 (f) and (g), interactions among recreation opportunities and other multiple uses will be examined. This examination will consider the impacts of the proposed recreation activities on other uses and values and the impacts of other uses and activities associated with them on recreation opportunities, activities, and quality of experience.

(5) Formulation and evaluation of alternatives under paragraphs (3) and (4) above will be coordinated to the extent feasible with present and proposed recreation activities of local and State land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan and recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands.

(6) The visual resource will be inventoried and evaluated as an integrated part of the forest planning process, addressing both the landscapes visual attractiveness and the publics visual expectation. As guided by chapter 2380, Forest Service Manual, definitive land areas of the forest will have a visual quality objective assigned as a part of the management prescription to direct management practices and the management of the visual resource.

(7) Off-road vehicle use will be planned and implemented to minimize adverse effects on the land and resources, promote public safety, and minimize conflicts with other uses of the National Forest System lands. Forest planning will evaluate the potential effects of vehicle use off-roads and, on the basis of the requirements of Part 295, of this chapter and be guided by in Chapter 2355, Forest Service Manual, classify areas and trails of National Forest System lands as to whether or not off-road vehicle use may be permitted.

(j) The effects of mineral exploration and development in the planning area will be considered in the management of renewable resources. When available, the following will be recognized in the forest plan:

(1) Active mines within the area of land covered by the forest plan;

(2) Outstanding or reserved mineral rights;

(3) The probable occurrence of various minerals, including locatable, leasable, and common variety;

(4) The potential for future mineral development and potential for withdrawal from development and

(5) The probable effect of renewable resource allocations and management on mineral resources and activities, including exploration and development.

(k) Planning the management of the water and soil resources will be in accordance with paragraphs (1) through (6) of this paragraph, and be guided by Chapter 2510, Forest Service Manual.

(1) Current water uses, both consumptive and non-consumptive, within the area of land covered by the forest plan, including instream flow requirements, will be determined, in cooperation with appropriate government entities.

(2) Existing impoundments, transmission facilities, wells, and other man-made developments on the area of land covered by the forest plan will be identified.

(3) The probable occurrence of various levels of water volumes, including extreme events which would have a major impact on the planning area, will be estimated.

(4) Plans must comply with the requirements of the Federal Water Pollution Control Act, as amended by the Clean Water of 1977, the Safe Drinking Water Act, and all substantive and procedural requirements of Federal, State, and local governmental bodies with respect to the provision of public water systems and the disposal of waste water.

(5) Existing or potential watershed conditions that will influence soil productivity, water yield, water pollution, or hazardous events, will be evaluated.

(6) Measures, as directed in applicable Executive Orders, to minimize risk of flood loss and to restore and preserve floodplain values, and to protect wetlands, will be adopted.

(l) Forest planning will provide for the indentification, protection, interpretation and management of cultural resources on National Forest System lands. Planning for the resource will be governed by the requirements of Federal laws pertaining to historic preservation, and be guided by Chapter 2360, Forest Service Manual, and the criteria in paragraphs (1) through (3) of this paragraph.

(1) Forest planning will:

(i) Provide an overview of known data relevant to history, ethnography, and prehistory of the area under consideration, including known cultural resource sites;

(ii) Identify areas requiring more intensive inventory;

(iii) Provide for evaluation and identification of sites for the National Register of Historic Places;

(iv) Provide for establishing measures for the protection of cultural resources

from vandalism and other human depredation, and natural destruction;

(v) Identify the need for maintenance of historic sites on, or eligible for inclusion in, the National Register of Historic Places; and

(vi) Identify opportunities for interpretation of cultural resources for the education and enjoyment of the American public.

(2) In the formulation and analysis of alternatives, interactions among cultural resources and other multiple uses will be examined. This examination will consider impacts of the management of cultural resources on other uses and activities and impacts of other uses and activities on cultural resource management.

(3) Formulation and evaluation of plan alternatives will be coordinated to the extent feasible with the State cultural resource plan and planning activities of the State Historic Preservation Office and State Archaeologist and with other State and Federal agencies.

(m) Forest planning will provide for the establishment of Research Natural Areas (RNAs). Planning will make provision for the identification of examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special or unique characteristics of scientific interest and importance and that are needed to complete the national network of RNAs. Biotic, aquatic, and geologic types needed for the network will be identified using a list provided by the Chief, Forest Service. Authority to establish RNA's is delegated to the Chief in § 2.60(a) of Title 7 CFR and in § 251.23 of this chapter. Recommendations for establishment of areas will be made through the planning process and according to the guidance for the selection of areas for RNAs and for the preparation of establishment reports as provided in section 4063, Forest Service Manual.

**§ 219.13 Management standards and guidelines.**

(a) Management of National Forest System lands requires adherence to the planning principles stated in § 219.1; specific management requirements to be met in accomplishing goals and objectives include, as a minimum, those in paragraphs (b) through (i) of this section.

(b) All management practices will:

(1) Conserve soil and water resources, and not allow significant or permanent impairment of the productivity of the land;

(2) Minimize serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces unless these are specifically accepted, as in Wilderness;

(3) Prevent or reduce serious, long-lasting hazards from pest organisms under the principles of integrated pest management;

(4) Protect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under paragraphs (e) and (f) of this section;

(5) Provide for and maintain diversity of plant and animal communities to meet overall multiple-use objectives, as provided in paragraph (g) of this section;

(6) Be monitored and evaluated as required in § 219.5(k) to assure that practices protect soil, watershed, fish, wildlife, recreation, and aesthetic values; maintain vegetative productivity; and reduce hazards from insects, disease, weed species, and fire;

(7) Be assessed prior to project implementation for potential physical, biological, aesthetic, cultural, engineering, and economic impacts and for consistency with multiple uses planned for the general area;

(8) Ensure that fish and wildlife habitats are managed to maintain viable populations of all existing native vertebrate species and to improve habitat of selected species, coordinated with appropriate State fish and wildlife agencies and monitored in cooperation with these agencies, to the extent practicable;

(9) Include measures for preventing the destruction or adverse modification of critical habitat for threatened and endangered species;

(10) Provide that any existing transportation and utility corridor, and any right-of-way that is capable of accommodating the facility or use from an additional compatible right-of-way, be designated as a right-of-way corridor. Subsequent right-of-way grants will, to the extent practicable, and as determined by the responsible official, be confined to designated corridors;

(11) Ensure that any roads constructed through contracts, permits, or leases are designed according to standards appropriate to the planned uses, considering safety, cost of transportation, and effects upon lands and resources;

(12) Provide that all roads are planned and designed to re-establish vegatative cover on the total disturbed area within a reasonable period of time, not to exceed 10 years after the termination of a contract, lease or permit, unless the road is determined necessary as a permanent addition to the National Forest Transportation System; and

(13) Maintain air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations, and as further guided by Chapter 2120, Forest Service Manual.

(c) Management prescriptions that involve vegetation manipulation of tree cover for any purpose will:

(1) Be best suited to the multiple-use goals established for the area with all potential environmental, biological, cultural resource, aesthetic, engineering, and economic impacts, as stated in the regional and forest plans, being considered in this determination;

(2) Assure that lands can be adequately restocked as provided in paragraph (h)(3) of this section, except where permanent openings are created for wildlife habitat improvement, vistas, recreation uses and similar practices;

(3) Not be chosen primarily because they will give the greatest dollar return or the greatest output of timber, although these factors will be considered.

(4) Be chosen after considering potential effects on residual trees and adjacent stands;

(5) Avoid permanent impairment of site productivity and ensure conservation of soil and water resources;

(6) Provide the desired effects on water quantity and quality, wildlife and fish habitat, regeneration of desired tree species, recreation uses, aesthetic values, and resource yields; and

(7) Be practical in terms of transportation and harvesting requirements, and total costs of preparation, logging, and administration.

(d) When openings are created in the forest by the application of even-aged silviculture, the provisions of paragraphs (1) and (2) of this paragraph apply.

(1) The blocks or strips cut will be shaped and blended with the natural terrain to achive aesthetic and wildlife habitat objectives to the extent practicable. Openings will be located to achieve the desired combination of multiple objectives. Regional plans will provide guidance on the dispersion of openings, and size variations of openings, in relation to topography, climate, geography, local land use patterns, forest type and other factors. The regional plan will specify the state of vegetation to be reached before a cutover is no longer considered an opening.

(2) Individual cut blocks, patches, or strips will conform to the maximum size limits for areas to be cut in one harvest operation established by the regional plan according to geographic areas and forest types. This limit may be less than, but will not exceed, 60 acres for the

Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types except as provided in paragraphs (i) through (iii) of this paragraph:

(i) Cut openings larger than those specified may be permitted where larger units will produce a more desirable combination of benefits. Such exceptions will be provided for in regional plans. The following factors will be considered in determining size limits by geographic areas and forest types: Topography; relationship of units to other natural or artificial openings and proximity of units; coordination and consistency with adjacent forests and regions; effect on water quality and quantity; visual absorption capability; effect on wildlife and fish habitat; regeneration requirements for desirable tree species based upon the latest research findings; transportation and harvesting system requirements; natural and biological hazards to survival of residual trees and surrounding stands; and relative total costs of preparation, logging, and administration of harvest cuts of various sizes. Specifications for exceptions will include the particular conditions under which the larger size is permitted and set a new maximum size permitted under those conditions.

(ii) The size limits may be exceeded on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The established limit will not apply to the size of areas harvested as a result of natural catastrophic condition such as fire, insect and disease attack, or windstorm.

(e) Special attention will be given to land and vegetation for approximately 100 feet from the edges of all perennial streams, lakes, and other bodies of water and will correspond to at least the recognizable area dominated by the riparian vegetation. No management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, and deposits of sediment will be permitted within these areas which seriously and adversely affect water conditions or fish habitat. Topography, vegetation type, soil, climatic conditions, management objectives, and other factors will be considered in determining what management practices may be performed within these areas or the constraints to be placed upon their performance.

(f) Conservation of soil and water resources involves the analysis, protection, enhancement, treatment, and evaluation of soil and water resources, and their responses under management and will be guided by instructions in official technical handbooks. These handbooks must show specific ways to avoid or mitigate damage, and maintain or enhance productivity on specific sites. These handbooks may be regional in scope or, where feasible, specific to physiographic or climatic provinces.

(g) The selected alternative will provide for diversity of plant and animal communities and tree species to meet the overall multiple-use objectives of the planning area. Diversity of plant and animal communities and tree species will be considered throughout the planning process. Inventories will include quantitative data making possible the evaluation of diversity in terms of its prior and present condition. For each planning alternative, the interdisciplinary team will consider how diversity will be affected by various mixes of resource outputs and uses, including proposed management practices. To the extent consistent with the requirement to provide for diversity, management prescription, where appropriate and to the extent practicable, will preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that it is at least as great as that which would be expected in a natural forest and the diversity of tree species similar to that existing in the planning area. Reductions in existing diversity of plant and animal communities and tree species will be prescribed only where needed to meet overall multiple-use objectives. Planned type conversion will be justified by an analysis showing biological, economic, social, and environmental design consequences, and the relation of such conversions to the process of natural change.

(h) The management requirements in paragraphs (1) through (7) of this paragraph apply to timber harvest and cultural treatments.

(1) No timber harvesting will occur during the planning period on lands classified as not suited for timber production pursuant to § 219.12(b) (1) through (5) except as necessary to protect other multiple-use values or activities that meet other objectives on such lands if the forest plan establishes that such actions are appropriate.

(2) The selected harvest schedule provides the allowable sale quantity, the quantity of timber that may be sold from the capable, available, and suitable land covered by the forest plan during the planning period. Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale quantity so long as the total amount sold for the planning period does not exceed the allowable sale quantity. Nothing in this paragraph prohibits salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger of insect or disease attack and where consistent with silvicultural and environmental standards. Such timber may either substitute for timber that would otherwise be sold under the plan or, if not feasible, be sold over and above the planned volume.

(3) When trees are cut to achieve timber production objectives, the cuttings will be made in such a way as to assure that lands can be adequately restocked within 5 years after final harvest. Research and experience will indicate that the harvest and regeneration practices planned can be expected to result in adequate restocking. Adequate restocking means that the cut area will contain the minimum number, size distribution, and species composition of regeneration as specified in regional silvicultural guides attached to the forest plan for each forest type. Five years after final harvest means 5 years after clearcutting, 5 years after final overstory removal in shelterwood cutting, 5 years after the seed tree removal cut in seed tree cutting, or 5 years after selection cutting.

(4) Cultural treatments such as thinning, weeding, and other partial cutting may be included in the forest plan where they are intended to increase the rate of growth of remaining trees, favor commercially valuable tree species, favor species or age classes which are most valuable for wildlife, or achieve other multiple-use objectives.

(5) Harvest levels based on intensified management practices will be decreased no later than the end of each planning period if such practices cannot be completed substantially as planned.

(6) Timber harvest cuts designed to regenerate an even-aged stand of timber will be carried out in a manner consistent with the protection of soil, watershed, fish and wildlife, recreation, and aesthetic resources, and the regeneration of the timber resource.

(7) Timber will not be harvested where such treatment would favor an abnormal increase in injurious insects and disease organisms.

(i) Monitoring will ensure as a minimum that:

(1) Lands are adequately restocked as specified in the Forest Plan;

(2) Lands identified as not suited for timber production will be examined at least every 10 years to determine if they have become suitable; if determined suited such lands will be returned to timber production.

(3) Maximum size limits for harvest areas are evaluated to determine whether such size limits should be continued; and

(4) Destructive insects and disease organisms do not increase following management activities.

### § 219.14 Research.

(a) Research needs for management of the National Forest System will be identified during planning and continually reviewed during evaluation of implemented plans. Particular attention will be given to research needs identified during the monitoring and evaluation described in § 219.5(k). These identified needs will be included in formulating overall research programs and plans which involve private as well as public forest and rangelands.

(b) Research needed to support or improve management of the National Forest System will be established and budgeted at the research station and national levels. Priorities for this portion of the Forest Service Research Program will be based upon the information gathered at all planning levels of the National Forest System.

(c) An annual report will be prepared at the national level with assistance from Regions and Stations which will include, but not be limited to, a description of the status of major research programs which address National Forest System needs for Research, significant findings, and how this information is to be or has recently been applied.

### § 219.15 Revision of regulations.

The regulations in this subpart will be regularly reviewed and, when appropriate, revised. The first such review will be completed no later than 6 years after the approval date of these regulations. Additional reviews will occur at least every 5 years thereafter.

### § 219.16 Transition period.

(a) Until a forest planning area of the National Forest System land is managed under a forest plan developed pursuant to these regulations and approved by the regional forester, the land may continue to be managed under existing land use and resource plans. As soon as practicable, existing plans will be amended or revised to incorporate standards and guidelines in this subpart. Pending approval of a forest plan, existing plans may be amended or revised to include management requirements not inconsistent with the provisions of the Forest and Rangeland Renewable Resources Planning Act, as amended, and these regulations.

(b) A forest plan may become effective prior to the development and approval of its related regional plan, provided that the forest plan will be reviewed upon regional plan approval, and if necessary, amended to comply with regional management direction. If such an amendment is significant, it will be made pursuant to the requirements for the development of a forest plan.

## Appendix F—Regulation Outline and Index

Outline of Rules for Land Management Planning in the National Forest System

*Subject*

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c. Plan Review by Chief:
1. Approve proposal and the environmental impact statement; Issue Report of Decision:
i. State the decision.
ii. Identify alternatives considered.
iii. Specify preferred alternative.
iv. Identify and discuss all factors considered.
v. Means to Avoid Environmental Harm.
2. Disapprove proposal or the EIS.
3. Exclusion from appeal under 36 CFR 211.19; provisions for requests for reconsideration; requests for stays of implementation.
d. Conformity.
e. Amendment.
f. Revision.
g. Planning Records.
h. Regional Plan Content:
1. Major public issues and management concerns.
2. Management situation summary.
3. Management direction—programs, goals and objectives.
4. Distriubtion of regional activities.
5. Management standards and guidelines.
6. Monitoring and evaluation.
7. Appropriate references.
8. Interdisciplinary team members and qualifications.
i. Monitoring and Evaluation:
1. Management practices to be measured and frequency.
2. State and Private Forestry programs.
3. Economic and social impacts.
4. Resource outputs and environmental impacts on areas larger than national forests or states.
5. Research programs.
6. NFS programs.

219.10 Regional Planning Actions.
a. Introduction.
b. Concerns and Issues to be Considered:
1. Efficiency.
2. Timber and Wood fiber.
3. Range resources.
4. Fire management.
5. Disease and pests.
6. Water quality, quantity and soil productivity.
7. Landownership.
8. Recreation.
9. Fish and wildlife habitats.
10. Threatened and endangered species.
11. Mineral exploration and development.
12. Transportation facilities.
13. Visual quality.
14. Rights of way.
15. Cultural resources.
16. Research natural areas.
Wilderness Management Options.
c. Regional Plans Contribute and Respond to the Assessment and Program.
d. Each Regional Plan will Establish Standards and Guidelines for:
1. Tree openings created by even-aged management.
2. Biological growth potential used in determining timber capability.
3. Transportation corridors.
4. Air quality.
5. Unit of measure for expressing mean annual increment.
e. Public Participation and Coordination Activities.
f. Data for Regional Planning.
g. Regional Analysis of the Management Situation.

219.11 Forest Planning Procedure.
a. Forest Plan.
b. Responsibilities:
1. Forest Supervisor.
2. Interdisciplinary Team.
i. DEIS.
ii. FEIS.
c. Approval Process, Plan Review by Regional Forester.
1. Approve proposal and environmental impact statement: Issue Record of Decision.
i. State the decision.
ii. Identify alternative considered.
iii. Specify preferred alternative.
iv. Identify and discuss all factors considered.
v. Means to Avoid Environmental Harm.
2. Disapprove the proposal or the EIS.
3. Transmit base timber harvest schedule departure request to Chief.
4. Appeal of Decision to approve or disapprove forest plan; requests for stay of implementation.
d. Conformity.
e. Amendment.
f. Revision.
g. Planning Records.
h. Forest Plan Content:
1. Major public issues and management concerns.
2. Management situation summary.
3. Long-range policies, goals and objectives, with management prescription.
4. Vicinity, timing, standards and guidelines for practices.

5. Monitoring and evaluation requirements.
6. Appropriate references to information.
7. Interdisciplinary team members and qualifications.
i. Monitoring and Evaluation.
1. Requirements.
i. Management practices to be measured and frequency.
ii. Expected precision and reliability.
iii. Evaluation reports.
2. Evaluation reports will contain at least:
i. Quantitative estimates of performance.
ii. Documentation of measured effects.
iii. Recommendations for change.
iv. Continuing evaluation.
v. Costs.
3. Interdisciplinary team recommendations.

219.12 Forest Planning Actions.
a. Introduction.
b. Each Plan will Identify Lands Available, Capable, and Suitable for Timber Production.
1. Requirements of timber producing lands.
i. Not legislatively or administratively withdrawn.
ii. Biological growth potential.
iii. Technology available to insure timber production without irreversible resource damage.
iv. Assurance for adequate restocking.
2. Determine potential economic efficiency in commercial timber production.
i. Direct benefits.
ii. Direct costs.
iii. Economic analysis.
3. Each alternative consider costs and benefits of alternative timber management regimes and lands tentatively identified as not suited for timber production if:
i. Land is suitable for uses that preclude timber production.
ii. Silvicultural standards and guidelines cannot be met.
iii. Lands are not cost efficient.
c. Choice of Vegetation Management Practice.
d. Formulation of Harvest Schedule Alternatives.
1. Determinations of the quantity of timber sold during the planning period and departures from the base harvest schedule.
i. Planned sales and future harvests.
ii. Guidelines:
A. Long term sustained yield capacity and base harvest schedule.
B. Departure alternatives to the base harvest schedule.
C. Even-aged stands scheduled to be harvested.
D. Perpetual timber harvest at the long term sustained yield capacity.
iii. Alternatives providing for departures.
2. Selected harvest schedule provides the allowable sale quantity.
e. Non-Wilderness (RARE II) Lands.
1. During analysis of the management situation evaluate the following areas:
i. Inventoried wilderness not yet designated.
ii. Areas contiguous to wilderness, primitive, or administratively proposed wilderness.
iii. Areas contiguous to roadless areas with wilderness potential.
iv. Legislatively or administratively proposed areas.
2. Criteria for wilderness evaluation if not otherwise stated:
i. Wilderness values.
ii. Values foregone.
iii. Feasibility of management as wilderness.
iv. Proximity to other wilderness areas.
v. Long term changes in species, plant and animal diversity community.
f. Direction for the Management of Designated Wilderness and Primitive Areas:
1. Limiting and distributing visitor use.
2. Control Measures.
g. Fish and Wildlife Habitat Management:
1. Desired future conditions.
2. Management indicator species.
3. Consulting other agencies' fish and wildlife Biologists.
4. Access and dispersal problems.
5. Pest and fire management effects.
6. Population trends of management indicator species.
7. Critical habitat for threatened and endangered species.
h. Grazing and Browsing Lands.
1. Procedures used and data obtained.
i. Range condition and trend studies.
ii. Records of actual use.
iii. Management indicator species of wildlife.
iv. Present and potential supply estimates.
2. Analysis of the management situation.
3. Alternative range management practices.
i. Grazing management systems.
ii. Methods.
iii. Evaluation of pest problems.
iv. Conflicts and beneficial interactions.
v. Physical facilities.
vi. Existing permits.
vii. Free roaming horses and burros.
i. Dispersed and Developed Recreation:
1. Forest planning will identify.
i. Physical and biological characteristics.
ii. Recreational preferences.
iii. Recreation opportunities.
2. Supply of recreational facilities.
3. Recreation alternatives.
4. Formulation and analysis of alternatives.
5. Evaluation of alternatives.
6. Land ownership patterns.
7. Off-road vehicle use.
j. Mineral Exploration and Development Consideration and Information Needs:
1. Active mines.
2. Mineral rights.
3. Probable occurrences.
4. Development potential.
5. Probable effect of renewable resource allocation on mineral activities.
k. Water and Soil Management:
1. Current water uses.
2. Existing impoundments, transmission facilities, etc:
3. Water volumes.
4. Legal requirements.
5. Watershed conditions.
6. Protective measures.
l. Cultural Resources:
1. Forest plan will.
i. Provide an overview.
ii. Identify areas requiring more intensive inventory.
iii. Evaluation of sites for the National Register of Historic Places.
iv. Provide protective measures.
v. Maintenance of historic sites.
vi. Identify opportunities for interpretation.
2. Analysis of alternatives.
3. Evaluation of alternatives.
m. Research Natural Areas:

219.13 Management Standards and Guidelines.
a. Introduction.
b. Management Practices will:
1. Conserve soil and water resources.
2. Minimize physical hazards.
3. Prevent pest hazards.
4. Protect water bodies.
5. Provide for and maintain plant and animal diversity.
6. Be monitored and evaluated.
7. Be assessed for NEPA considerations.
8. Maintain fish and wildlife populations.
9. Prevent adverse modification of critical habitat for threatened and endangered species.
10. Provide right of ways and transportation corridors.
11. Ensure appropriate road construction design according to use.
12. Provide that all roads are designed to re-establish vegetative cover.
13. Maintain air quality.
c. Management Prescriptions involving vegetation manipulation of tree cover will:
1. Be best suited for multiple use.
2. Assure adequate restocking within 5 years.
3. Not be chosen primarily because of greatest dollar return.
4. Consider potential effects of residual trees.
5. Avoid permanent impairment of site productivity.
6. Provide desired effects.
7. Be practical in terms of transportation and harvesting requirements.
d. Openings Created by Even-Aged Management:
1. Must be shaped and blended.
2. Maximum size limits.
i. Factors to be considered in determining size limits.
ii. Size limits may be exceeded after 60 days public notice.
iii. Natural catastrophic conditions excluded.
e. Special Attention to Land and Vegetation Near perennial streams, lakes and other bodies of water.
f. Conservation of Soil and Water Resources.
g. Diversity of Plant and Animal Communities and Tree Species.
h. Timber Harvest and Cultural

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Part V

# Department of the Interior

Fish and Wildlife Service

Captive Wildlife Regulation

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 13 and 17**

## Captive Wildlife Regulation

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Final rule.

**SUMMARY:** There is evidence that federal regulation of activities involving captive-bred wildlife under the Endangered Species Act of 1973 has interfered with effective propagation of Endangered and Threatened species in the United States. The Service recognizes that captive propagation is, in some cases, important for conserving such species, and that the Act authorizes the permitting of otherwise prohibited activities to enhance the propagation or survival of affected species. This rule grants general permission for persons to conduct otherwise prohibited activities with captive-bred wildlife under specified conditions, which are designed to protect wild populations of wildlife and to ensure that the activities will be conducted to enhance the propagation or survival of the species.

**EFFECTIVE DATE:** Amendments to §§ 17.3 and 17.21 become effective on [date of Federal Register publication]. Amendments to §§ 13.12 and 17.11, and the deletion of §§ 17.7 and 17.33 will become effective on [30 days after date of Federal Register publication].

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard L. Jachowski, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235-2418.

**SUPPLEMENTARY INFORMATION:**

### Background

The Service issued an advance notice of potential rulemaking on April 14, 1978 (43 FR 16144–16145) and a proposed rule on May 23, 1979 (44 FR 30044–30049) that would amend regulations concerning captive Endangered and Threatened wildlife. The proposal followed from a decision by the Service that activities involving captive wildlife should be regulated, as required by the Endangered Species Act of 1973, but only to the extent necessary to conserve the species. As reported in the proposal, strict regulation has interfered with the captive propagation of wildlife. It has caused persons who would otherwise breed Endangered species to cease doing so, or to reduce the number of offspring produced because they could not readily be transferred to other persons.

The Act and the regulations implementing it prohibit activities that include, among other things, taking (defined to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such activities), importation, exportation, and interstate or foreign commerce. However, permission may be granted for such activities if they are conducted for certain purposes. In the case of Endangered wildlife, the Act limits them to scientific purposes or to purposes of enhancing the propagation or survival of the affected species. In the case of the Threatened wildlife, regulations limit them to scientific purposes, purposes of enhancing the propagation or survival of the affected species, economic hardship, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Considering that persons may be permitted to undertake otherwise prohibited activities for the purpose of enhancing propagation or survival of the affected species, the Service believes that a wide range of activities involved in maintenance and propagation of captive wildlife should readily be permitted when wild populations are sufficiently protected from unauthorized taking, and when it can be shown that such activities would not be detrimental to the survival of wild or captive populations of the species. This was the basis for the Service's proposal, as outlined below.

The proposed rule of May 23, 1979, contained the following provisions:

1. It defined the terms "bred in captivity" and "captivity" in order to specify the wildlife that would be eligible for special regulatory treatment;
2. It replaced the current definition of "enhance the survival, enhancing the survival, or enhancement of survival" with a broader definition of "enhance the propagation or survival" to encompass normal practices of animal husbandry;
3. It deleted the regulations for captive, self-sustaining populations of otherwise Endangered species;
4. It permitted persons to take Endangered or Threatened wildlife bred in captivity—if the species is determined to be eligible, if the taking is to enhance propagation or survival of the species, and if persons maintain records and submit semiannual reports to the Service of such taking that results in death or permanent loss of reproductive ability of the wildlife;
5. It permitted persons to import, export, or engage in interstate or foreign commerce with Endangered or Threatened wildlife bred in captivity—if the species is determined to be eligible, if the activity is to enhance propagation or survival of the species, if wildlife to be reimported is uniquely identified prior to export, if the recipient is qualified to maintain the wildlife, and if persons maintain records and report transactions to the Service within 10 days; and
6. It established criteria for determining the eligibility of species for this treatment: either they are exotic to the United States or their wild populations in the United States are sufficiently protected from unauthorized taking and are in low demand.

### Comments on the proposal

The proposed rule generated 1,498 letters to the Service (Table I).

Table I.—Sources of letters commenting on the proposed rule of May 23, 1979, concerning captive wildlife.

| Source | Number of letters |
|---|---|
| Private individuals: | |
| Form letters | 1,240 |
| Individual letters | 115 |
| Zoos | 53 |
| Bird breeders | 39 |
| State governments or agencies | 21 |
| Animals breeders' organizations | 11 |
| Biomedical organizations | 5 |
| Zoological organizations | 4 |
| Circus organizations | 3 |
| Conservation organizations | 2 |
| Federal employees | 2 |
| Total | 1,498 |

All of the form letters and most of the other letters urged adoption of the regulations as proposed. Only three persons commented that captive populations should be delisted to exempt them from control under the Act. Conversely, the Director of the Game and Fish Division of the Georgia Department of Natural Resources asked that the present regulations not be changed because strict federal controls would support recent Georgia state legislation regulating possession of exotic wild animals. Other letters expressed support for the proposal but suggested that changes be made before a final rule is issued.

Specific comments regarding changes are discussed below. They concern five general topics: the definition of terms used in the rule, the criteria for registering persons, the requirements for reporting on activities, the eligibility of species for inclusion under the rule, and allowance of activities for other purposes under the rule.

*1. Definition of terms*

The American Association of Zoological Parks and Aquariums and several of its member institutions commented that the term "person" in the rule should be amended to refer to both persons and institutions, since many institutions would need to register.

The term "person" is used throughout the Service's regulations, and is defined in 50 CFR Part 10 to mean "any individual, firm, corporation, association, partnership, club, or private body, anyone or all, as the context requires." This appears to meet the requirements of zoos, and the term "person" alone is adequate in the present rule.

The use of the term "bred in captivity" in the proposal also prompted comments. The Director of the Gladys Porter Zoo in Brownsville, Texas, supported use of the definition contained in the proposal because it is consistent with the definition of "bred in captivity" that has been adopted by the nations that are parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Three members of the San Diego Zoo staff raised questions about the application of this definition. They asked for clarification of the means by which the Service would determine specimens to be eligible under the definition, and pointed out practical difficulties in applying the definition. In particular, they asked (1) if evidence of second-generation captive birth in one institution would suffice to qualify wildlife in other institutions, (2) what numbers will allow a species to be maintained indefinitely, and if such numbers must be at any single institution, (3) if evidence of second-generation captive birth in one subspecies would suffice to qualify other subspecies of the same species, and (4) how the magnitude of wild stock necessary to prevent deleterious inbreeding will be determined. Another individual asked that the Service publish a list of species found to be eligible under the proposed definition of "bred in captivity."

A more basic comment on the definition of "bred in captivity" was made by the Secretary of the Smithsonian Institution, who cited evidence from the National Zoological Park that a very large proportion of zoo populations of exotic ungulates which have reliably produced second-generation young have ultimately become extinct, most likely due to high juvenile mortality resulting from inbreeding. He observed that it would be best to avoid the production of second-generation young from related animals as long as possible, and instead to mate first-generation young to any available unrelated animals. His advice was that the reliable production of second-generation young not be used as part of the definition.

Ringling Bros.-Barnum & Bailey Combined Shows, Inc. also urged the Service to adopt a simpler definition because as proposed it was "overly technical, complex and restrictive."

The Service is concerned that the proposed definition might conflict with an important purpose of this rule, which is to facilitate captive propagation. The restrictive terms of the proposed definition were adopted for the Convention because of a need to prevent wild populations from being exploited. In the present rule, that is precluded by limiting treatment to exotic species in captivity in the United States (which depends on import restrictions for all Endangered and Threatened wildlife) or to particular native species in captivity in the United States (which depends on sufficient protection from unauthorized taking, as determined for individual species of wildlife). Accordingly, there is little need to incorporate the full definition as used for the Convention in this rule. By incorporating it, the Service might encourage inbreeding of captive wildlife to avoid the need to obtain specific permits, to the long-term detriment of the species. The risk to wild populations as the result of using a simpler definition is negligible.

*2. Criteria for registering persons*

In the proposed rule, persons would be authorized to engage in importation, exportation, and interstate or foreign commerce involving captive-bred wildlife if they first registered with the Service. It was proposed that standards developed by the U.S. Department of Agriculture (U.S.D.A.) to implement the Animal Welfare Act (9 CFR Part 3) be used as the basis for determining if persons were eligible to be registered. Since the standards in 9 CFR Part 3 apply only to mammals, the Service would need to develop similar standards applicable to birds, reptiles and other forms for wildlife.

Several persons and organizations concerned with breeding of birds, reptiles, amphibians and fishes commented that standards for maintaining those forms of wildlife should be developed before final rules are issued. The American Federation of Aviculture, the Exotic Bird Club of Oregon and the Wisconsin Bird and Game Breeders Association further asked that licensing by the U.S.D.A. not be required for birds.

The Humane Society of the United States, the Riverbanks Zoological Park and the Baltimore Zoo stated that the Service should develop registration standards that are more restrictive than those of the U.S.D.A. In this regard, the Institute for Herpetological Research suggested that the Service should require persons to demonstrate their competence in order to be registered. Mr. William B. Love of Jensen Beach, Florida argued that prior experience should not be a condition for registration, so that "well-meaning enthusiasts" could undertake wildlife propagation. Mr. Paul J. Hollander of Ames, Iowa, commented that the U.S.D.A. standards sometimes conflict with the best methods for inducing breeding.

In view of these comments, the Service has determined that the U.S.D.A. standards should not be used as the sole criteria for registering persons under the present rule. Considering that the purpose of this rule is to enhance the propagation or survival of species, persons should be registered if they can be expected to contribute to this purpose. Accordingly, the final rule has been revised to require additional information from applicants that will enable the Service to determine if they are capable of enhancing the propagation or survival of affected species. Consistent with the intent of this rule, application requirements and issuance criteria have been kept as simple and flexible as possible. An advantage of this approach is that it avoids the need for developing detailed federal standards for the maintenance and propagation of various types of wildlife, which would be a very lengthy and complex task, and which might prove to be counter-productive to the purposes of this rule.

There were several other comments regarding the criteria. One person suggested that the Service should only register buyers and not sellers of wildlife, while the American Federation of Aviculture stated that the registration should apply to both or neither. Considering that the Act prohibits both selling and receiving in interstate or foreign commerce, the Service considers it necessary for both buyer and seller to register. This is made clear in the final rule.

The Governor of Kentucky suggested that persons should be registered in order to take captive-bred wildlife, just as the proposal would require for persons engaging in other prohibited activities. The Service has adopted this suggestion. Otherwise, there would be

no way of enforcing the proposed reporting requirement for taking. Inclusion of taking with other activities requiring registration will simplify the rule and will not substantially increase the burden of paperwork for persons who propagate wildlife.

The Riverbanks Zoological Park, the American Federation of Aviculture, and an individual commented that the Service should clarify the criteria it would use to determine if foreign recipients of captive-bred wildlife are acceptable. The Service believes that criteria for persons receiving captive-bred wildlife should be similar whether they are in the United States or in another country. The final rule applies the same basic criteria to persons in either situation. Foreign persons will not have to register with the Service, but persons in the United States will, in essence, have to satisfy the Service that foreign recipients of wildlife would qualify for registration if they were operating in this country.

*3. Reporting requirements*

Many zoos in the United States and Canada, and a growing number of them in other countries participate in the International Species Inventory System (ISIS). This is a computer-based record of wildlife in captivity. Its purpose is to provide information needed to effectively manage captive populations, especially with regard to avoiding inbreeding and relocating surplus stock. The Service assisted in funding the development of ISIS because of its applicability to the Endangered Species Program. The Buffalo Zoological Gardens and the Commissioner of the Department of Environmental Conservation of New York suggested that the Service accept ISIS inventory forms as meeting the reporting requirements of participating institutions. The Fort Worth Zoological Park suggested that the Service provide funds to help support ISIS.

In reconsidering the reporting requirements, the Service has determined that there is no great advantage to requiring reports within 10 days of each taking, or on a semiannual basis for transactions. Instead, annual reports will be required summarizing all takings that result in death or permanent loss of reproductive ability and all interstate or foreign transactions. The individual ISIS inventory forms are not a convenient source of such information for the Service. Instead each registered institution might use ISIS to generate the information for its annual report. Limits to funding for the Service's Endangered Species Program, and increasing emphasis on conservation of wild populations of Endangered and Threatened species, might preclude the Service from continuing to fund ISIS as in the past.

The San Diego Zoo asked if reports of transactions had to be made by the sender, the receiver, or both. The Service intends that both (if under U.S. Jurisdiction) should report in order to obtain a more complete accounting of activities under each registration. In this regard, the American Federation of Aviculture requested clarification as to whether the reporting requirement would include intrastate transactions or non-commercial interstate transactions, which are not prohibited by the Act.

The primary uses of reports are to assess compliance with the regulations, to determine the effectiveness of the regulations, and to measure the success of captive propagation of Endangered and Threatened wildlife. Accordingly, it would be useful to know not only the number of otherwise prohibited transactions and takings that occured, but also the number of births, deaths, and non-prohibited transactions. Inventories of the species in captivity could be developed from these data that would be useful to the public as well as the Service. The Service intends to request such information from registrants.

Two other interesting comments were made by individuals: one that each specimen of exotic wildlife should have a certificate to show its legal origin, and the other that record-keeping should not be required of registrants. The former suggestion is impractical to administer, considering that possession of Endangered or Threatened wildlife is not prohibited unless the wildlife was illegally taken. The latter suggestion runs counter to normal practices of animal propagation, which require careful record-keeping.

The American Federation of Aviculture recommended that registration and reporting for Endangered and Threatened birds be carried out in the same manner as is required for native upland gamebirds and migratory waterfowl. The problems with this are that registration standards are not uniform throughout the United States for persons holding such birds, and that the need to promptly report each transaction has been eliminated from this rule.

The Riverbanks Zoological Park, the American Federation of Aviculture and an individual asked that the Service clarify its requirements for marking wildlife that is to be reimported. Rather than require that each such specimen be uniquely marked, which is impractical for some species or types of specimens, the Service has revised the rule to require unique identification by marking or other means (such as a written description of identifying characteristics of the specimen in question). No single method of marking is suitable for all forms of wildlife, and the Service will accept any reliable method that can be used to distinguish wildlife bred in captivity in the United States from other wildlife that is presented for importation.

*4. Eligibility of specimens*

The American Association of Zoological Parks and Aquariums, eight of its member institutions, the American Pheasant and Waterfowl Society, Ringling Bros.-Barnum & Bailey Combined Shows, Inc., and several individuals asked that some means be found to facilitate importation of wildlife bred in captivity outside of the United States. One suggestion was that the Service accept documentation from foreign authorities certifying that the wildlife is bred in captivity. Another suggestion was that the Service should routinely approve permits for importing wildlife bred in captivity in a foreign facility owned by an institution in the United States.

The Service recognizes the problems of zoos, animal breeders and biomedical laboratories in importing wildlife bred in captivity outside of the United States, and is giving further consideration to ways in which importation of such wildlife might be facilitated. However, the Service also recognizes the need to protect wild populations from exploitation. At present, import controls are the only effective protection that the regulations provide with respect to wild populations of exotic species. Accordingly, the present rule does not apply to wildlife bred in captivity outside of the United States. It was beyond the scope of the proposed rule on this subject. Such importation will continue to be authorized by individual permits, rather than in a general way under this rule.

The Kansas Herpetological Society requested clarification of the means by which the Service would determine the eligibility of native species for these regulations. In response, the Service has incorporated in the final rule a reference to section 4(b) and section 4(f)(2)(A) of the Act and the implementing regulations. These references specify procedures with respect to petitions and notification of the public and governors of affected states, and are designed to ensure adequate public participation.

Other comments on the subject of eligible species concerned particular Endangered or Threatened species.

Inclusion of the Hawaiian goose (*Branta sandvicensis*) and the Hawaiian duck (*Anas wyvilliana*) was requested by the Smithsonian Institution, the American Federation of Aviculture, and the Service's Acting Endangered Species Coordinator in Hawaii. The Park Superintendent for Emporia, Kansas, and another individual also asked that the Hawaiian goose be included. However, the Governor of Hawaii asked that these two species not be included until there is a real demonstrated need to change their status in captivity. Considering that the proposed rule did not include these two species, and considering the Governor's objection to their inclusion, the Service invites further public comment and evidence to show if they should be proposed for eligibility.

The Assistant Director of the Service's Endangered Wildlife Research Program requested that the masked bobwhite quail (*Colinus virginianus ridgway*) be included, and that the criteria for determining the eligibility of native species be amended by adding consideration of "whether the stock to be made available is surplus to the needs of the restoration program for that species or subspecies." Mr. Jerome J. Pratt of Sierra Vista, Arizona, supported inclusion of this quail and the Hawaiian species mentioned above.

The Service has considered the merits of adding a criterion that would involve a judgment concerning the success of captive propagation in meeting restoration needs. In this regard, the Governor of Colorado suggested that if captive breeders benefit by removal of stock from the wild to prevent inbreeding, they should also make some repayment to the wild. The Service has concluded that conservation of wild populations must be its primary goal, and that the proposed criteria do allow consideration of the success of captive propagation in determining the eligibility of native species. The masked bobwhite quail might meet the proposed criteria and will be further considered. The suggestion by the Governor of Colorado would be difficult to implement, and would require precautions to prevent harm to existing wild stocks.

*5. Other purposes*

This rule is intended to facilitate activities for the purpose of enhancing propagation or survival of the affected species. As discussed above, there are a few other purposes for which permits may be issued. The American Pheasant and Waterfowl Society commented that the requirements for exporting captive-bred wildlife for purposes other than to enhance the survival of the species were still too severe. Such concerns are beyond the scope of this rule, and perhaps beyond the scope of activities permissible under the Act. However, the Service is willing to consider further suggestions for improving this and other rules.

Organizations concerned with biomedical research on non-human primates also commented on the proposed rule. It was fully supported by the Association of Primate Veterinary Clinicians and by the California Primate Research Center. The Director of the Delta Regional Primate Research Center at Tulane University asked that the rule also apply to Threatened species used in biomedical research. The Director of the New England Regional Primate Research Center suggested that allowance be made for importing the progeny of parent breeding stock in overseas colonies owned by a research institution in the United States and for the shipment of such stock to other institutions. The National Society for Medical Research made similar comments and offered specific suggestions on procedures, but also more generally urged that the final rulemaking avoid "the imposition of repressive regulations on the utilization of individual animals captive bred specifically for research use."

The Service recognizes that scientific research is a purpose for which permits may be issued, but also that authorization of activities for that purpose is beyond the scope of the proposed rule. Only those activities conducted to enhance propagation or survival of the affected species may be authorized by the present rule. The primary use of nonhuman primates in biomedical research is to solve human problems. While in some cases there is a benefit to the affected wildlife species, it is not always the intended result. The Service will consider applications for permits to authorize transactions involving non-human primates produced in breeding colonies for the purpose of biomedical research, but not in the context of this rule unless the purpose of the activities can be shown to enhance the conservation of the affected species, in the wild or in captivity.

Description of final rule

The purpose of this rule, as described above, is to facilitate activities for the purpose of enhancing the propagation or survival of Endangered and Threatened wildlife. The Service is accomplishing this by (1) amending the regulations with respect to certain definitions and (2) granting a general permit, by regulation, to authorize persons to conduct otherwise prohibited activities with captive-bred wildlife under a set of prescribed conditions. In accordance with section 10(d) of the Act, the Service has found that this exception was applied for in good faith (see 43 FR 16145 and 44 FR 30044), that it will not operate to the disadvantage of Endangered or Threatened species, and that it will be consistent with the purposes and policy set forth in section 2 of the Act.

The final rule contains the following provisions.

1. It defines the terms "bred in captivity" or "captive-bred" in order to clarify the conditions that must be met for wildlife to be eligible for special consideration. The definition of these terms is based on the definition adopted by nations that are parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, the present definition excludes, for purposes of the Act, that part of the Convention's definition limiting consideration to progeny of parental stock that is established, maintained and managed in certain ways. In cases where activities conducted under this rule are also subject to the Convention, the stricter definition used for the Convention will apply.

2. The final rule defines the term "captivity," both with respect to captive-bred wildlife as considered in this rule, and with respect to any species of wildlife for which captive populations are accorded special treatment under the Act. The definition of "captivity" is the same as that used for the Convention, and is the same as the definition in the proposed rule of May 23, 1979.

3. The final rule replaces the definition of "enhance the survival," "enhancing the survival," or "enhancement of survival" with a definition of "enhance the propagation or survival." The revised definition is essentially unchanged from the proposed rule. It includes a wide range of normal husbandry practices needed to maintain self-sustaining and genetically viable populations of wildlife in captivity, in addition to the provisions already in the regulations concerning the accumulation, holding and transfer of surplus stock and the exhibition of wildlife in an educational manner.

4. The final rule deletes regulations in §§ 13.12, 17.7 and 17.33 concerning captive self-sustaining populations. The present rule eliminates the need for special regulations concerning the captive populations of these few otherwise Endangered species. The Service is phasing out these provisions to allow persons holding valid permits

for captive self-sustaining populations to become registered under the present rule. The Service will undertake to register such persons under the provisions of § 17.21(g), considering that they have satisfied the new application requirements in obtaining their current permits. Such persons need not reapply. Persons holding other valid permits for Endangered or Threatened species might also qualify for registration under this rule. If so, they should submit a written request to the Service, asking for registration on the basis of their previous application and supplying any additional information required in § 17.21(g).

5. The final rule authorizes persons to take, import and export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any Endangered or Threatened wildlife that is bred in captivity in the United States. Although this rule amends § 17.21, which concerns only Endangered species, the same provisions are extended to Threatened species by § 17.31(a). The authorization is limited by several conditions. First, the species of wildlife must be exotic to the United States or else its wild populations native to the United States must be determined by the Service to be adequately secure for unauthorized taking. Second, the purpose of authorized activities must be to enhance the propagation or survival of the affected species. Third, activities are not authorized for interstate or foreign commerce in the course of a commercial activity if they involve non-living wildlife. This provision is intended to discourage the propagation of Endangered and Threatened wildlife for consumptive markets rather than for direct benefit to the species. Fourth, reimport is allowed only if specimens were adequately identified when previously exported. Fifth, the authorization is extended only to persons who register with the Service.

The final rule specifies application requirements for registration. These have been kept as simple as possible, but still provide the Service with information needed to determine if the applicant has the means of enhancing propagation or survival of the affected wildlife. Registration has been extended to persons conducting research (such as pathology, for example) directly related to propagation or survival of the wildlife, even though they might not maintain living specimens. Registration also includes persons who exhibit wildlife to educate the public about the ecological role and conservation needs of wildlife. The list of application requirements has been amended to request information about how such education is to be accomplished.

In the final rule, registrants are required to maintain written records of their authorized activities and to annually report them to the Service. Both buyer and seller must be registered in the case of interstate commerce. Registrants also must obtain approval from the Service before exporting or entering into foreign commerce in captive-bred wildlife if it is not to remain under the care of the registrant. The purposes of this requirement are to limit access to captive-bred wildlife to qualified persons and to deter potentially harmful release of captive-bred wildlife into the wild.

Since the amendments to §§ 17.3 and 17.21 relieve existing restrictions on captive-bred populations of Endangered and Threatened wildlife, the Service finds good cause to waive the 30-day period for making such amendments effective upon publication. The remaining amendments will take effect 30 days after publication, as prescribed in 43 CFR 14.5(b)(5).

This rule is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531–1543; 87 Stat. 844, as amended), and was prepared by Dr. Richard L. Jachowski, Federal Wildlife Permit Office.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

## Regulations Promulgation

Accordingly, Parts 13 and 17 of Title 50 of the Code of Federal Regulations are amended as follows:

## PART 13—GENERAL PERMIT PROCEDURES

### § 13.12 [Amended]

1. Delete the following entry from the list of types of permits in § 13.12(b):

* * * * *

"Captive self-sustaining populations (wildlife only).....17.33."

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

### § 17.3 [Amended]

2. Insert the following definitions in alphabetical order:

* * * * *

"Bred in captivity" or "captive-bred" refers to wildlife, including eggs, born or otherwise produced in captivity from parents that mated or otherwise transferred gametes in captivity, if reproduction is sexual, or from parents that were in captivity when development of the progeny began, if development is asexual.

"Captivity" means that living wildlife is held in a controlled environment that is intensively manipulated by man for the purpose of producing wildlife of the selected species, and that has boundaries designed to prevent animal, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food.

* * * * *

### § 17.3 [Amended]

3. Replace the definition of "Enhance the survival," "Enhancing the survival," or "Enhancement of survival" with the following definition:

* * * * *

"Enhance the propagation or survival," when used in reference to wildlife in captivity, includes but is not limited to the following activities when it can be shown that such activities would not be detrimental to the survival of wild or captive populations of the affected species:

(a) Provision of health care, management of populations by culling, contraception, euthanasia, grouping or handling of wildlife to control survivorship and reproduction, and similar normal practices of animal husbandry needed to maintain captive populations that are self-sustaining and that possess as much genetic vitality as possible;

(b) Accumulation and holding of living wildlife that is not immediately needed or suitable for propagative or scientific purposes, and the transfer of such wildlife between persons in order to relieve crowding or other problems hindering the propagation or survival of the captive population at the location from which the wildlife would be removed; and

(c) Exhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species.

### § 17.7 [Deleted]

4. Delete § 17.7 entirely.

### § 17.11 [Amended]

5. Delete the phrase ". . . or because they constitute a captive, self-sustaining population (see § 17.7) . . ." from the last sentence of paragraph (a) and delete the last sentence of paragraph (c)

that reads as follows: "The addition of the letters "C/P" in parentheses indicates that the reason for designating the species as threatened is that it consititues a captive, self-sustaining population."

**§ 17.11 [Amended]**

6. Delete the following species entries from the list of endangered and threatened wildlife:

| Common name | Scientific name | Population | Known distribution | Portion of range where threatened or endangered | Status | When listed | Special rules |
|---|---|---|---|---|---|---|---|
| | | MAMMALS | | | | | |
| Jaguar | *Panthera onca* | In captivity in U.S | N/A | Entire | T(C/P) | 22 | N/A |
| Lemur, black | *Lemur macaco* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Lemur, ringtailed | *Lemur catta* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Leopard | *Panthera pardus* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Tiger | *Panthera tigris* | do | N/A | Entire | T(C/P) | 22 | N/A |
| | | BIRDS | | | | | |
| Pheasant, brown eared | *Crossoptilon mantchuricum* | In captivity in U.S | N/A | Entire | T(C/P) | 22 | N/A |
| Pheasant, Edward's | *Lophura edwardsi* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Pheasant, bar-tailed | *Syrmaticus humiae* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Pheasant, Mikado | *Syrmaticus mikado* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Pheasant, Palawan peacock | *Polyplectron emphanum* | do | N/A | Entire | T(C/P) | 22 | N/A |
| Pheasant, Swinhoe's | *Lophura swinhoii* | do | N/A | Entire | T(C/P) | 22 | N/A |

**§ 17.21 [Amended]**

7. Add a new paragraph (g) as follows:

* * * * *

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this Section, any person may take; import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States provided the following conditions are met:

(i) The wildlife is a species having a natural geographic distribution not including any part of the United States, or the wildlife is a species that the Director has determined to be eligible in accordance with subparagraph (5) of this paragraph;

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export from the United States, and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with subparagraphs (2), (3) and (4) of this paragraph.

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240). Requests for registration must be submitted on an official application form (Form 3–200) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, or in conducting research directly related to maintaining and propagating such wildlife;

(iii) A decription, if appropriate, of the means by which the applicant intends to educate the public about the ecological role and conservation needs of the affected species;

(iv) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

(v) A copy of the applicant's license or registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR Part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making his decision, the Director will consider, in addition to the general criteria in § 13.2(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Each person so registered must maintain accurate written records of activities conducted under the registration and must submit to the Director a written annual report of such activities.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife which will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed recipient of the wildlife has expertise, facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director shall use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph: (A) whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons, and (B) whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to man or as a result of the effectiveness of law enforcement.

(ii) The Director shall follow the procedures set forth in section 4(b) and section 4(f)(2)(A) of the Act and in the regulations promulgated thereunder with respect to petitions and notification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in subparagraph (5)(i) of this paragraph, the Director has determined the following species to be eligible for the provisions of this paragraph:

Laysan teal (*Anas laysanensis*).

**§ 17.33 [Deleted]**

8. Delete § 17.33 entirely.

Dated: September 10, 1979.

**Rolf L. Wallenstrom.**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 79-28705 Filed 9-14-79; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Monday
September 17, 1979

Part VI

# Department of the Interior

Fish and Wildlife Service

Review of Status of Hawaiian Tree Snails

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR 17]

## Review of the Status of Hawaiian Tree Snails

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Review of the status of a genus of Hawaiian (Oahu) tree snails, *Achatinella.*

**SUMMARY:** Upon receipt of a petition from Mr. Alan D. Hart, the Service is reviewing the status of a genus of Hawaiian (Oahu) tree snails, *Achatinella* to determine if Endangered or Threatened status is appropriate. Substantial data presented with the petition indicates the remaining species of this genus may be threatened by various factors. These data are summarized in the following notice. The Service welcomes additional data on the status of the genus.

**DATES:** Information regarding the status of this genus should be submitted on or before November 16, 1979.

**ADDRESSES:** Comments and data submitted in connection with this review should be sent to the Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Chief, Office of Endangered Species (703/235–2771).

**SUPPLEMENTARY INFORMATION:**

### Background

On July 17, 1979, the Service received a petition from Mr. Alan D. Hart indicating that a genus of Hawaiian tree snails, *Achatinella,* may be in danger of extinction.

Substantial information has been presented with the petition. These once abundant tree snails are now seriously reduced with over half of the 41 described species currently considered extinct. The remaining species may be in danger of extinction throughout all or a significiant protion of their range. Most *Achatinella* tree snails live at elevations from 1,000 to 3,700 feet in the native and introduced forests of the Koolau and Waianae mountain ranges on the Island of Oahu, State of Hawaii.

The genus is famous for its beauty, variability, and extreme localization. It is highly vulnerable to human activities because the various species have (1) small geographical ranges, (2) a low reproductive rate, (3) no defense mechanisms, and (4) a general dependence on relatively intact native forest conditions. Extensive deforestation and other human-induced alterations of Oahu's native environment has resulted in the extinction of half the species in the genus.

The major factors leading to the extinction of *Achatinella* are (1) destruction of native forests, (2) dilution and alteration of native forests by human-introduced plants and trees, (3) predation by human-introduced animals, and (4) overcollection by humans.

The Service has determined that the petition presents substantial evidence warranting a review of the status of the genus and hereby announces that it is reviewing the status of *Achatinella* to determine whether or not it should receive Endangered or Threatened status.

The species of this genus which are believed to be extinct are:

*Achatinella abbreviata*

| | |
|---|---|
| *A. buddii* | *A. papyracea* |
| *A. caesia* | *A. phaeozona* |
| *A. casta* | *A. rosea* |
| *A. cestus* | *A. spaldingi* |
| *A. decora* | *A. stewardii* |
| *A. dimorpha* | *A. thaenumi* |
| *A. elegans* | *A. valida* |
| *A. juddii* | *A. viridans* |
| *A. juncea* | *A. vittata* |
| *A. lehuiensis* | *A. vulpina* |
| *A. livida* | |

The species thought to be in danger of extinction are:

*Achatinella aperfulva*

| | |
|---|---|
| *A. bellula* | *A. lila* |
| *A. bulimoides* | *A. lorata* |
| *A. byronii* | *A. mustelina* |
| *A. concavospira* | *A. pulcherrima* |
| *A. curta* | *A. pupukanioe* |
| *A. decipiens* | *A. sowerbyana* |
| *A. fulgens* | *A. swiftii* |
| *A. fuscobasis* | *A. taeniolata* |
| *A. leucorrophe* | *A. turgida* |

If the genus *Achatinella* is determined to be Endangered or Threatened, all known living species of the genus would have that same status, and be subject to the protections of the Endangered Species Act of 1973, 16 U.S.C. 31531 *et seq.*

A copy of the petition is available for examination during normal business hours at the Office of Endangered Species, 1000 North Glebe Road, Suite 500, Arlington, Virginia.

This review is being conducted in compliance with section 4(c)(2) of the Endangered Species Act of 1973, as amended, which requires that, in the case of petitions, a review must be made and published prior to the initiation of any subsequent procedures for determination of Endangered or Threatened status.

The Service invites and requests anyone who may have information concerning status, distribution, population trends, threats, or other pertinent data, to contact the Director. The Service will analyze all data that it now has, as well as any data that are received as a result of this review, and will take appropriate action.

This notice of review was prepared by Mrs. Lorraine Kadar Williams, Office of Endangered Species (703/235–1975).

Dated: September 10, 1979.

Rolf L. Wallenstrom,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 79-28724 Filed 9-14-79; 8:45 am]

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Federal Register

Monday
September 17, 1979

Part VII

# Securities and Exchange Commission

Mutual Funds; Bearing of Distribution Expenses

## SECURITIES AND EXCHANGE COMMISSION

**[17 CFR Parts 239, 270, 274]**

**[Release Nos. 33-6119, IC-10862, File No. S7-743]**

## Bearing of Distribution Expenses by Mutual Funds

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rulemaking and amendment to form.

**SUMMARY:** The Commission is proposing for public comment a rule to permit open-end management investment companies to bear expenses associated with the distribution of their shares, if such companies comply with certain conditions and procedures. The proposed rule requires that any decision by an open-end management investment company to use its assets to finance distribution be approved by its shareholders and directors, including its disinterested directors. The rule also contains provisions intended to ensure that the disinterested directors are not dominated nor unduly influenced by management, that the directors are fully informed and they exercise reasonable business judgment. The procedures in the proposed rule by which shareholders and directors would approve a plan to use assets for distribution are generally similar to those prescribed by statute for approval of investment advisory contracts. In addition, the Commission is proposing for public comment:

(1) A rule to exempt from the requirement of prior Commission approval certain transactions between open-end management investment companies and their affiliated persons whereby investment company assets are used for distribution, if those arrangements comply with the conditions and procedures generally applicable to a plan to bear distribution expenses, and

(2) Certain disclosure and reporting requirements relating to use of assets for distribution, including a revision of the registration and reporting form for open-end management investment companies. The Commission is taking these actions because it believes that directors and shareholders of open-end management investment companies should be able to make business judgments to use their assets for distribution in appropriate cases but that, in view of the investment adviser's conflict of interest with respect to any recommendation to bear distribution expenses, any such exercise of business judgment should be subject to conditions designed to ensure that it is made by persons who are free of undue management influence and have carefully considered all relevant factors.

**DATES:** Comments must be received by December 7, 1979.

**ADDRESSES:** Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C., 20549. All submissions should refer to File No. S7-743. All comments received will be available for public inspection and copying in the Commission's Public Reference Room 1100 L Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Richard W. Grant, Special Counsel to the Director (202) 272-2041, or

Dianne E. O'Donnell, Acting Special Counsel (202) 272-2115, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing rule 12b-1 [17 CFR § 270.12b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] (the "Act") to permit open-end management investment companies ("mutual funds" or "funds") to bear expenses associated with the distribution of their shares. Because the investment adviser has a conflict of interest with respect to any recommendation to bear distribution expenses, the rule contains conditions intended to ensure that the disinterested directors are not dominated nor unduly influenced by fund management, that the directors are fully informed and they exercise reasonable business judgment. Among the significant provisions of the rule are the following:

Selection and nomination of directors who are not interested persons of the fund would be committed to the discretion of such disinterested directors;

A fund which decides to bear distribution expenses would be required to formulate a written plan describing all material aspects of the proposed financing of distribution, and all agreements relating to implementation of the plan would be in writing; such plan and agreements would contain certain provisions similar to those required by the Act for investment advisory contracts;

The plan and any related agreements would have to be approved by a vote of at least two-thirds of the fund's outstanding voting securities and at least two-thirds of its directors, and at least two-thirds of its directors who are not interested persons of the fund and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan;

In considering a plan to finance distribution, the directors would be required to give appropriate weight to all pertinent factors, including, but not limited to, those set forth in the rule; and

The directors would be required to decide, in the exercise of their reasonable business judgment and in light of their fiduciary duties under state law and under the Act, that there was a reasonable likelihood that the plan would benefit the funds and its shareholders. In addition, the Commission is proposing rule 17d-3 [17 CFR 270.17d-3] under the Act to provide an exemption from section 17(d) [15 U.S.C. 80a-17(d)] of the Act and rule 17d-1 [17 CFR 270.17d-1] thereunder to the extent necessary for agreements between mutual funds and their affiliated persons whereby payments are made by the fund with respect to distribution, if such agreements are entered into in compliance with rule 12b-1. The Commission is also proposing certain disclosure and reporting requirements relating to use of assets for distribution, so that funds which bore distribution expenses in accordance with rule 12b-1 would disclose that fact to shareholders and prospective investors, as well as report it in registration statements filed with the Commission.

### Background

Traditionally the Commission and the staff have taken the position that it is generally improper under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] (the "Act") for open-end management investment companies ("mutual funds" or "funds") directly or indirectly to bear expenses related to the distribution of their shares.[1] However, the Commission has for some time been reviewing the issue in light of public interest in and comment on the legal and policy implications of use of fund assets for distribution.[2]

To facilitate this review the Commission, in May, 1978, issued an Advance Notice of Proposed Rulemaking with respect to the conditions under which mutual funds might be permitted to bear distribution expenses (Investment Company Act Release No. 10252, May 23, 1978) [43 FR

[1] Investment Company Act Release No. 9915 (Aug. 31, 1977) [42 FR 44810, Sept. 7, 1977].

[2] In November, 1976, the Commission held hearings on use of fund assets for distribution. The hearings were announced in Investment Company Act Release No. 9470 (Oct. 4, 1976) [41 FR 44770, Oct. 12, 1976]. Copies of the transcripts of the hearings and written submissions made in connection with the hearings are filed in File No. 4-186.

23589, May 31, 1978] ("Release No. 10252"). Release No. 10252 stated the Commission's belief that it would be useful to explore further whether permitting mutual funds to finance distribution could, under some circumstances, benefit investors. It also solicited public comment on a variety of possible conditions upon such use of assets designed to safeguard the interests of investors. Release No. 10252 stated that any such conditions would be intended to accomplish three objectives: (1) To minimize the conflict of interest on the part of a fund's investment adviser or officers with respect to a decision to bear distribution expenses, by limiting the degree to which the advisory fee was affected by sales; (2) To assure that fund assets were used for distribution only when, after appropriate consideration, the disinterested directors and shareholders determined such use of fund assets to be in the fund's interest; and (3) To assure that all shareholders were treated fairly in connection with the bearing of distribution expenses.

Release No. 10252 set forth for comment several conditions to minimize the conflict of interest between the adviser and the fund on the issue of distribution. It proposed a possible requirement that the advisory fee, rather than being computed as a percentage of assets, be expressed as a fixed-dollar amount, or based on the fund's net asset value per share. It was suggested that the fixed-dollar fee not be permitted to exceed the advisory fee paid in the previous year nor be increased for a set period of time (such as two years); the possibility of a prohibition on tying officers' compensation directly to assets was also raised. As a possible means to ensure fairness to existing shareholders, Release No. 10252 raised the possibility that load funds which wanted to bear distribution expenses might be required to issue a new series of shares to bear such expenses, in order that assets belonging to existing shareholders would not be so charged. It also set forth for consideration by the commentators several procedural requirements relating to approval by directors and shareholders of a plan to bear distribution expenses, most of which were similar to those which are required for investment advisory contracts by sections 15 (a) and (c) of the Act [15 U.S.C. 80a–15 (a), (c)]. The Commission stated that, if it did promulgate rules with respect to distribution, such rules would not affect in any way the fiduciary responsibilities owed to funds under section 36 [15 U.S.C. 80a–35] of the Act; therefore, directors would have to determine that such use of assets "would likely benefit" the fund's shareholders as well as comply with Commission rules. Release No. 10252 suggested conditions to ensure that disinterested directors could make a decision on distribution free from the influence of the adviser, such as requiring a fund which bears distribution expenses to have a board composed entirely of disinterested directors, or requiring the disinterested directors as a group to review the proposal initially and to have independent legal counsel (or other independent experts) assist them in their decision. Release No. 10252 also discussed possible requirements as to disclosure of distribution expenses, and reiterated the Commission's position, taken in the *Vanguard* proceeding,[3] that a fund which bore distirubtion expenses but did not charge a sales load could not call itself a "no-load" fund.

With respect to the Commission's authority over mutual fund distribution, Release No. 10252 stated that any proposed rules on distribution expenses would be issued under section 12(b) of the Act [15 U.S.C. 80a–12(b)] and such other sections as appeared appropriate, and set forth the Commission's view that, to the extent a fund made payments to promote the distribution of its shares, it would be acting as a distributor of its shares within the meaning of section 12(b), and would be doing so in addition to any functions that might be perfomed by an underwriter.

The release also specifically solicited public comments on several issues: Whether certain types of distribution expenses should be treated differently from others (e.g., whether a distinction should be drawn between continuing payments to dealers and one-time transactional fees); Whether a fund which bears distribution expenses should also be able to charge a sales load; and Whether the Commission should specify a list of factors (e.g., reduction of expenses and expense ratio) to be considered by directors in making a decision on distribution. Again, the Commission warned that compliance with any such list should not be considered a "safe harbor."

[3] See *The Vanguard Group, Inc.*, Investment Company Act Release No. 9927 (Sept. 13, 1977) [42 FR 47607, Sept. 21, 1977] (notice of and order for hearing on application and order of temporary exemption pending outcome of hearing).

## Summary of Comments on Release No. 10252

Over fifty comments were received on Release No. 10252.[4] More than twenty commentators, including a majority of the commentators associated with the mutual fund industry, submitted statements in favor of use of fund assets for distribution;[5] some thirty commentators, including twenty individual mutual fund shareholders, argued against such use of fund assets.[6] In general, both groups of commentators disagreed with the conditions to use of fund assets for distribution suggested by the Commission in Release No. 10252. Those who favored using assets for distribution termed the proposed conditions unnecessary and impractical; those who argued against a change in Commission policy echoed the charge of impracticability, and argued that the proposed conditions would do little to mitigate the advisor's conflict of interest inherent in any decisions to bear distribution expenses.

The majority of the commentators who argued in favor of permitting mutual funds to bear distribution expenses urged the Commission merely to adopt the standard for decisionmaking by fund disinterested directors laid down in *Tannenbaum* v. *Zeller*, 552 F.2d 402 (2d Cir.), *cert. denied*, 434 U.S. 934 (1977), as the only legal requirement in this area. In *Tannenbaum*, the Court of Appeals for the Second Circuit held that the disinterested directors of a fund did not breach their fiduciary duty to the fund in deciding to forgo recapture of brokerage commissions, because the directors were truly independent of the adviser; they were fully informed of all the available alternatives; and they had reached a "reasonable business judgment" made after thorough review of all relevant factors. Commentators

[4] Copies of the comments are filed in File No. S7–743.

[5] Capital Research & Management Co.; Drinker Biddle & Reath; Edie Management Services, Inc.; Fidelity Management & Research Co.; First Variable Rate Fund for Government Income, Inc.; Neil Flanagin; John P. Freeman; Investment Company Institute ("ICI"); Investors Diversified Services, Inc. ("IDS"); Investors Group of Companies; Kemper Financial Services, Inc.; Lord, Abbett & Co.; Mathers Fund (by Sidley & Austin); Douglas Mercer; Merrill Lynch Asset Management, Inc.; National Association of Securities Dealers, Inc. ("NASD"); Selected Funds Independent Directors; Carl Shipley; United Services Fund; Vanguard Group of Investment Companies; Vanguard Group Independent Directors (by Dechert, Price & Rhoads); Waddell & Reed.

[6] Alpen Securities, Inc.; American Bankers Association; Dreyfus Corporation; Federated Investors, Inc.; Philadelphia Life Asset Planning Co; John A. Philbrick (fund director); Scudder, Stevens & Clark; securities Fund Investors, Inc.; all individual commentators.

stated that essentially the same issue—use of fund assets to promote sales—was involved in Release No. 10252 as was involved in *Tannenbaum*.[7] Adoption of that standard as the only measure of legality for funds bearing distribution expenses would therefore be appropriate, even though any Commission rules would apply to a wide variety of factual circumstances, while the *Tannenbaum* standard was formulated for a specific set of facts.[8]

As noted above, many commentators who urged that funds be permitted to bear distribution expenses called the Commission's suggested conditions unnecessary to solve the adviser's conflict of interest. They stated that there was no evidence that the adviser's conflict of interest with respect to distribution was any more severe than that inherent in the investment advisory contract, or that imposition of the type of conditions suggested in Release No. 10252 would make the directors' decision on distribution any more rational. Accordingly, they urged that the same procedures required for approval of the investment advisory contract under sections 15(a) and (c) of the Act be applied to any distribution contract, and that no conditions more stringent than the current statutory requirements be imposed for funds which bear distribution expenses.[9]

A second group of commentators, IDS, the Investors Group of Funds advised by IDS and the Vanguard Group of Investment Companies, proposed their own rules for use of fund assets. The Investors Group's rule would require all the directors but one to be disinterested; freeze the advisory fee for a period of two years to the amount paid in the fiscal year prior to first incurring distribution expenses; and require any contract to comply with the provisions of section 15 of the Act. IDS's rule would require at least 75 percent of the board to be disinterested, and require compliance by the contract with section 15, but contained no fee limitation. IDS also proposed that every fund which uses fund assets for distribution be required to have its disinterested directors chosen by a nominating committee composed entirely of other disinterested directors, as a further assurance that directors so chosen would be truly independent of the adviser. Both IDS and the Investors Group submitted that their rules would be preferable to the Commission's proposed conditions, especially with respect to composition of the board of directors, because, according to IDS, they would permit the adviser to be represented on the board and, thus, to have at least one director responsible for those recommendations of the adviser adopted by the directors.

The Vanguard Group of Investment Companies stated that the conflict of interest between the fund and the adviser would be substantially eliminated in the following circumstances: (1) The adviser's representation on the board of directors was limited; (2) The adviser provided only portfolio management services; and (3) The fund assumed responsibility for distribution and the directors determined the amount of distribution expenses. Where such circumstances did not exist, however, Vanguard stated that the Commission should establish the following "qualitative" guidelines for funds which bear distribution expenses:

(1) Specific standards to be considered by the directors, such as reduction of current expenses and future expense ratios; (2) Standards for review of distribution expenditures by directors and approval by shareholders, which standards should be no more stringent than those for advisory fees; (3) Appropriate disclosure to shareholders and prospective investors; (4) A board of directors composed predominantly or entirely of persons unaffiliated with the investment adviser; and (5) Provision of information to the board by nonaffiliates of the adviser (through, for example, a staff responsible solely to the directors, or independent consultants).

Two major fund organizations, the Dreyfus Corporation and Federated Investors, Inc., generally opposed use of fund assets for distribution expenses, stating that sales of fund shares were, and should remain, the adviser's business. Dreyfus stated that none of the suggested conditions would ameliorate the adviser's conflict of interest, and that the Commission's proposal would place disinterested directors in a difficult situation. According to Dreyfus, directors could be liable if they made the decision for the fund to bear distribution expenses on their own, because they would lack the necessary expertise, and thus they would be forced to consult experts, but reliance on experts would not protect the directors against liability if use of assets for distribution was not warranted by the facts. Dreyfus also raised the possibility that the necessarily heavy commitment of time and effort by disinterested directors to a decision to bear distribution expenses would erode their disinterested status. Federated argued that internalization of distribution would inevitably lead to internalization of investment advisory functions as well, but that such a result would be contrary to the Act.

As noted above, over twenty individual fund shareholders wrote letters to the Commission against use of fund assets for distribution. Some were load fund shareholders who objected to a charge against assets after they had already paid a sales load, while others perceived use of fund assets for distribution being only for the benefit of the adviser.

Although most of the commentators did not question the objectives set forth in Release No. 10252—minimizing the conflict of interest, ensuring a full review prior to approval by directors and shareholders, and ensuring fairness to shareholders—many of the specific conditions suggested by the Commission drew a great deal of criticism. For example, the proposed fixed-dollar advisory fee was attacked as an undue restriction on the directors' business judgment,[10] a "draconian" measure [11] which ignored the various degrees of the fund's involvement in distribution efforts,[12] a disincentive to the adviser to promote fund growth on its own,[13] and a measure leading to greater concentration in the mutual fund industry.[14] According to the commentators, the various exceptions to the fixed fee (for new funds and internalized funds, among others) only served to demonstrate the wide variety of circumstances and the need for the directors to have broad discretion in this area.[15] The advisory fee based on net asset value per share was also criticized as unwise and unnecessarily complex [16] and as a type of "performance" fee which would lead to an inappropriate emphasis on short-term performance.[17]

Similarly, the proposed issuance of a separate series of shares by funds had previously charged a sales load met with unanimous disapproval as leading to undue complexity of funds' capital structure (in possible violation of section 18 of the Act [15 U.S.C. 80a–18]),[18] and confusing to shareholders.[19] On this last

[7] Freeman; ICI; Lord Abbett; Merrill Lynch Asset Management.

[8] Vanguard Independent Directors.

[9] IDS; Investors Group; Drinker Biddle & Reath; Vanguard Group; Waddell & Reed; ICI; Vanguard Independent Directors; Flanagin; Fidelity; Lord Abbett.

[10] Drinker Biddle & Reath; Vanguard Group; Vanguard Independent Directors.

[11] Edie Management Services; ICI.

[12] ICI.

[13] Waddell & Reed; Dreyfus; NASD; Capital.

[14] Waddell & Reed; Flanagin.

[15] Edie Management Services; ICI.

[16] IDS; Investors Group.

[17] Scudder, Stevens & Clark.

[18] Investors Group; Drinker Biddle & Reath; Dreyfus.

[19] Vanguard Group; Capital.

point, several commentators stated that because the Commission would require directors to find the bearing of distribution expenses a benefit to *all* shareholders—which necessarily subsumes a finding of fairness to *existing* shareholders—the directors be permitted to consider any possible impact on existing shareholders as just one of the factors in their decision.[20] However, two commentators raised the possibility that, in the absence of prospectus disclosure at the time of investment, existing shareholders could argue they had been misled into believing that the full marketing costs had been paid at the time of purchase, and thus no further charge for distribution could be assessed against them.[21] With respect to the ability of a fund simultaneously to charge a sales load and to use fund assets for distribution, most commentators urged leaving the issue to the judgment of the board of directors.[22]

With respect to the procedural requirements relating to a decision to bear distribution expenses, several commentators questioned the need for conditions in this area more stringent than those applicable to investment advisory contracts,[23] although others supported the Commission's proposals for approval by two-thirds of the disinterested directors and a majority of the outstanding voting securities, and annual approval by the same standards.[24] Another commentator questioned the need for annual shareholder approval if there were no material changes in the arrangements,[25] and Dreyfus, as part of its position that advisers should remain responsible for any distribution effort, called shareholder approval meaningless. The proposed conditions that the amount to be spent for distribution be expressed as a fixed-dollar amount, rather than as a percentage of assets, also drew criticism; the commentators stated that the Commission should not arbitrarily limit the methods for determining the amount to be spent, so long as the adviser expressed the amount in a way that the directors and shareholders could understand.[26]

Several commentators asked for a further explanation of the Commission's legal authority with respect to distribution, specifically its statement in Release No. 10252 that a fund's payment for distribution would make it a "distributor" of its shares within the meaning of section 12(b).[27] Finally, the statement in the Release that directors should not include in the advisory fee any compensation for distribution efforts undertaken by the adviser was questioned by some of the commentators. They alleged that subsidization of distribution through the advisory fee was prevalent throughout the fund industry, and that to exclude compensation for distribution from the advisory fee would in effect require the fee to be "unbundled" into its distribution and investment management components.[28] The commentators, however, differed among themselves on whether this would be a desirable result. One preferred full disclosure of distribution costs and arrangements to such mandatory "unbundling," [29] while another suggested a separate contract for distribution as a means to force the directors to consider the benefits to the fund and alternatives to use of fund assets for distribution.[30]

## Proposed Rule 12b–1

The Commission has reevaluated the question of funds' bearing distribution expenses in light of the comments received in response to Release No. 10252 and in light of the philosophy and objectives of the Investment Company Act Study which is being conducted by the Division of Investment Management. The Commission has determined to propose for public comment rule 12b–1 under the Act.[31] If adopted, the rule would establish procedures and conditions pursuant to which mutual funds could incur expenses connected with distribution. The conditions in the proposed rule are significantly different from those which the Commission stated it had under consideration in Release No. 10252, because the Commission has concluded that there are a number of practical and technical difficulties with some of those conditions. In particular, proposed rule 12b–1 takes an approach substantially different from that suggested in Release No. 10252 to the problems of minimizing conflicts of interest and ensuring fairness to existing shareholders.

The various provisions of the proposed rule are discussed below. In general terms, the rule makes it unlawful for a mutual fund to finance distribution directly or indirectly except in compliance with the rule's substantive provisions. It prescribes procedural requirements which are similar in most respects to those established by the Act for approval of investment advisory contracts, although the requirements of the proposed rule are somewhat more stringent. The substantive provisions of the rule place a great deal of responsibility on fund directors, especially the disinterested directors. There are provisions intended to ensure that: (1) The disinterested directors are free of domination or undue influence by management; (2) The directors are fully informed and consider all relevant factors; and (3) The directors exercise reasonable business judgment and act in a manner consistent with their fiduciary duties.

## General Requirements

Paragraph (a) of the proposed rule would in effect make it unlawful for an open-end management investment company to incur distribution expenses except in compliance with the substantive provisions of the rule. Distribution expenses would include both direct and indirect expenses.

It may be difficult for a mutual fund to determine whether it is incurring distribution expenses indirectly if its investment adviser finances distribution of the company's shares. Some commentators and observers have contended that any such expenditures by an investment adviser constitute an indirect use of fund assets on the theory that the adviser is using funds derived from the advisory contract. That contention may be valid in some cases, but as a general theory it ignores economic reality. Because of the management and compensation system which predominates in the investment company industry, most investment advisers to investment companies have

[20] Vanguard Independent Directors; IDS; ICI.

[21] Freeman; Drinker Biddle & Reath.

[22] Drinker Biddle & Reath; Investors Group; ICI; NASD; Vanguard Group.

[23] Drinker Biddle & Reath; Vanguard Group; Flanagin; Lord Abbett; Waddell & Reed; Fidelity.

[24] IDS; Investors Group.

[25] Vanguard Group.

[26] Vanguard Group; IDS.

[27] Waddell & Reed; Mercer; NASD; Dreyfus.

[28] Edie Management Services; Dreyfus; NASD; Vanguard Group; Drinker Biddle & Reath.

[29] Vanguard Group.

[30] Drinker Biddle & Reath.

[31] Section 12(b) provides that it shall be unlawful for any registered open-end company, other than a company complying with section 10(d) of the Act, to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. The legislative history of section 12(b) indicates that it was intended to protect open-end companies "against excessive sales, promotion expenses, and so forth." *Investment Trusts and Investment Companies: Hearings Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong., 3d Sess. 112 (1940) (statement of David Schenker). Because the risk that a fund would be caused to incur such excessive expenses exists when it has any responsibility for distribution, the Commission remains of the view, taken in Release No. 10252, that a fund which incurs any distribution costs would be acting as a distributor of its shares within the meaning of section 12(b) and would be subject to any rules under that provision, regardless of whether other persons (e.g., an "underwriter") are also involved in the distribution effort.

an entrepreneurial interest in the sale of fund shares. Accordingly, expenditures by such advisers to further the sale of fund shares, while they may be expense items in the adviser's financial statement, in a great many instances are in the nature of a reinvestment of profits from providing investment advisory services in the development of the adviser's business. To the extent that such "profits" are not excessive, they are the adviser's to use as it sees fit. Certainly it would be anomalous to suggest that any excess of income from the advisory contract over expenses associated with providing advisory services would be the adviser's money if, for example, it was used to pay dividends, but would be the fund's money if it was used to finance sales of its shares. On the other hand, it clearly would constitute an indirect use of fund assets for distribution if the advisory fee was inflated in order to provide the adviser with funds for that purpose.

Under proposed rule 12b–1, fund directors, particularly the disinterested directors, would bear substantial responsibility for any decision to use fund assets for distribution. Under sections 15(a) and (c) of the Act they are also responsible for evaluating and deciding whether to approve the advisory contract. In fulfilling these obligations directors of mutual funds would have to give careful scrutiny to any expenditures by the investment adviser for distribution, and determine on the basis of the facts of each particular case whether such expenditures were being made out of legitimate "profits" from providing investment advisory services or constituted an indirect use of fund assets. The Commission expects that many boards of directors will elect to take a cautious approach to this problem, and that is one reason why the procedural requirements of proposed rule 12b–1 are similar to those established by the Act for approval of advisory contracts.

### Procedural Requirements

Paragraph (b) establishes procedures which would have to be followed for a fund to implement a plan to bear distribution expenses. As stated above, these requirements are similar to those prescribed by sections 15(a) and (c) of the Act for approval of the advisory contract. This concept was implicit in Release No. 10252 and was supported explicitly by a number of commentators, although many of the commentators objected to conditions more stringent than those for advisory contracts. The rule would require initial approval of a plan to bear distribution expenses by shareholders, the board of directors, and separately by the disinterested directors. The directors would be responsible for considering annually whether to continue such a plan. The plan would be terminable at any time; agreements entered into pursuant to such plan would be terminable on sixty days' notice to the other party or would terminate automatically upon assignment, as in the case with advisory contracts under section 15(a) of the Act.

The rule's procedural requirements would be more stringent than those for approving advisory contracts in several respects. First, shareholder and director approval would have to be by two-thirds vote rather than a majority. In addition, the board of directors would have to review the operation of the plan at least quarterly, and the plan and any related agreements would have to be terminable by the disinterested directors alone rather than by the whole board. These extra requirements appear necessary and appropriate, because use of fund assets for distribution poses serious problems due to the potential conflicts of interest and the frequently uncertain and speculative nature of anticipated benefits for a fund and its shareholders from such expenditures.

### Minimizing Conflicts of Interest: Independence of Directors

Since use of fund assets for distribution may benefit a fund's investment adviser, the adviser and any of its officers or employees who are associated with fund management would have a conflict of interest in recommending or deciding that a fund should use its assets in that way. Because directors who are not interested persons of the fund would not normally have such conflicts, the proposed rule would place great emphasis on the role of the disinterested directors in deciding whether to implement, continue, or terminate a plan to use fund assets for distribution. However, the Commission believes that, in order for them to make such a decision, it is not enough for them merely not to be interested persons of the fund within the meaning of the Act. For one thing, any director who had any direct or indirect financial interest in the operation of the proposed plan or in any agreement related to the plan should not participate in the decision of the disinterested directors.[32] For another, the disinterested directors must be in a position to act with genuine independence on behalf of the fund and its shareholders, which means they must be free of domination or undue influence by fund management.

The Commission is concerned that in many cases disinterested directors may not be able to act with genuine independence in deciding whether to use fund assets for distribution because of the control investment advisers typically exercise over the funds they advise.[33] To the extent that such control, whether exercised directly or indirectly, could extend to the process of selection and nomination of directors, the adviser's conflict of interest in this matter could lead to domination of or undue influence over disinterested directors. The Commission recognizes that many advisers would not attempt to abuse their control position, and that proper fulfillment of directors' duties depends primarily on the character, ability, and diligence of directors. Nevertheless, the Commission believes that in this case there should be additional regulatory requirements to enhance the independence of disinterested directors.

Accordingly, paragraph (c) of proposed rule 12b–1 conditions reliance on the rule on the commitment of the selection and nomination of disinterested directors to the discretion of the disinterested directors. This requirement will ensure a substantial measure of independence for disinterested directors, assuming they fulfill their duties in fact. It also has the advantage of being compatible with existing structures and mechanisms of corporate governance. The Commission, however, explicitly solicits comments on alternative mechanisms for selection of disinterested directors, such as nomination by shareholders, that would be intended to avoid control of the selection process by the investment adviser.

### Factors To Be Considered

Paragraph (d) of the proposed rule is intended to ensure that, before deciding to use fund assets for distribution, directors are fully informed. The rule would require directors to consider and give appropriate weight to all pertinent factors, but it also sets forth a list of factors which would have to be considered. This concept was suggested in Release No. 10252 and received generally favorable comment, although

[32] Such a director would not be an interested person of the fund within the meaning of section 2(a)(19) [15 U.S.C. 80a–2(a)(19)] of the Act in spite of having a financial interest in the plan, because section 2(a)(19)(A)(vi) requires the Commission to determine by order that a person is an "interested person" "by reason of having had * * * a material business or professional relationship" with the fund.

[33] See *Steadman Security Corp.*, Securities Exchange Act Release No. 13695, [1977–1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶81,243 at 88,339–18 and n.81 (June 29, 1977), *appeal pending*, No. 77–2415 (5th Cir.).

some suggested the list of factors should be in the release accompanying any rule rather than the rule itself. At this time the Commission believes that the list of factors should be in the rule in order to ensure an orderly process of decision-making by directors; however, so as not to make the process overly rigid, the factors are drafted to cover broad categories of concern rather than detailed or technical points. The following discussion of the factors is intended to provide additional guidance.

The first factor directors would have to consider if the rule was adopted is whether they need the assistance of independent counsel or experts. Because a decision to use fund assets for distribution may involve complicated business judgments and because directors may otherwise be too dependent on the adviser for information, the Commission believes that directors should give the question of getting outside help very serious thought. The Commission considered making outside counsel and experts mandatory under the proposed rule but decided such a requirement could impose undue costs in some cases.

The second factor to consider would be the "nature of the problems or circumstances which purportedly make implementation or continuation of [a plan to use fund assets for distribution] necessary or appropriate." Before directors can decide whether or not to use fund assets for distribution, it would appear appropriate for them to identify as precisely as possible why it is being proposed that the find do so. For example, some commentators have supported use of fund assets for distribution by arguing that net redemptions may harm fund performance by reducing the adviser's flexibility in managing the fund's portfolio. Others have contended that use of fund assets for distribution could lead to economies of scale or net savings. The nature of the directors' inquiry could vary greatly depending on the problems or circumstances to be addressed. Of course, inherent in identifying problems is ascertaining whether there are in fact problems. In the case of the first example cited above, for instance, it has been argued that there is no proof that net redemptions affect performance.[34] Use of this example or any others is merely illustrative of the complexity of the issues directors may face, and is not intended to imply that any particular conclusion must be drawn from a given set of facts.

The third factor deals with the next step in the inquiry: The causes of the problems or circumstances. To take the first example cited above, assuming the directors determine that net redemptions pose a problem which should be remedied, it would appear prudent to determine why the fund is experiencing net redemptions before approving expenditures of fund assets for distribution as the proper way of correcting the situation. If, for example, net redemptions appeared to be the result of poor investment performance, spending the fund's money to attempt to induce the sale of shares might not be the appropriate response. This example, of course, is oversimplifed, and the proposed rule recognizes that many factors may be relevant; the point is that directors, in identifying causes, may develop solutions other than or in addition to the use of fund assets for distribution.

After identifying the nature and the causes of the problem or circumstances, the next step would be evaluating the plan for using fund assets. That evaluation would require analysis of the method to be used, including the nature and approximate amounts of the expenditures, the nature of the anticipated benefits, and the time it would take for those benefits to be achieved. These concepts appear self-evident. Certainly the directors would want to know approximately how much was going to be spent and how. They would also want to know what the expected return was and how long it was going to take to achieve that return. Whether and to what extent these matters can be precisely quantified would, of course, depend on all the circumstances.

It is only logical that the directors should want to consider possible alternatives to the proposed plan. For example, if the perceived problems were due to net redemptions, merely attempting to bolster the selling effort might not be the appropriate response. If the fund was performing poorly as compared to others with similar objectives, changes in management or investment strategy might be appropriate instead of or, perhaps, in addition to financing distribution. It is especially important for the directors to exercise initiative in considering alternatives, rather than to merely react to proposals to use fund assets for distribution which may emanate from the investment adviser.

The sixth factor emphasizes that it is also important for the directors to be aware of the activities of other persons who finance or have financed distribution (e.g., the investment adviser). Decisions of the investment adviser about whether or to what extent to finance fund distribution could obviously affect the fund's plans. For instance, directors of a fund which was considering incurring distribution costs to stop net redemptions could find it prudent to determine whether the adviser intended to reduce any distribution-related expenditures it was making. If the adviser was reducing its expenditures by an amount similar to that which the fund was proposing to spend, the net effect might be to increase the adviser's profit rather than improve the sale of shares. In the context of considering the activities of other persons who finance distribution of fund shares, it would be appropriate for the directors to ascertain whether any payments to such other person by the fund are made in such a way as to result in an indirect use of fund assets for distribution. It has been the Commission's position that, if the directors make allowance for the adviser's distribution expenses in setting the advisory fee, they are in effect authorizing indirect use of the fund's assets for distribution. Similarly, the Commission has considered arrangements whereby a specific or readily determinable portion of the adviser's fee is designated as a source of compensation for sellers of fund shares to involve indirect use of fund assets. Of course, arrangements which contemplate unspecified payments by the adviser for distribution may also involve an indirect use of fund assets for distribution. The directors would have to evaluate such arrangements, looking to the substance rather than the form, in determining not only whether fund assets were being used for distribution but whether the advisory fee was excessive.

Obviously, a related factor the directors would have to consider in the exercise of their fiduciary duties is whether any person other than the fund (e.g., the investment adviser) will benefit from the fund's expenditures for distribution and, if so, whether such other person will receive disproportionate benefits. Typically the adviser would benefit if the fund's efforts to promote distribution led to net sales of fund shares. That result would not necessarily be inappropriate depending on the circumstances, but the directors should consider who will be the relative beneficiaries of the fund's efforts. If they decide any person other than the fund would derive excessive

[34] See, e.g., Freeman, *The Use of Mutual Fund Assets to Pay Marketing Costs*, 9 Loy. Chi. L. J. 533, 555 (1978).

benefits, they should make appropriate adjustments.

The directors would also have to consider specifically the effect of the plan on existing shareholders. It has been argued that it is inappropriate for shareholders who have paid a sales load to be required to pay further for distribution. A fund should not incur distribution expenses unless the directors believe doing so to be in the best interests of the fund and its shareholders. Nonetheless, the Commission believes it is important that the directors concentrate their attention specifically on whether expenditures of fund assets for distribution will be fair to existing shareholders.

The final factor in the rule, although not necessarily the last factor directors should consider, would apply when directors were deciding whether to continue to spend fund money for distribution. In that case a relevant consideration would obviously be whether or not the plan was working as anticipated. A conclusion that it was not working would not necessarily require abandoning the plan, but it would require a fundamental reevaluation of the plan, including reconsideration of whether it was in the fund's best interest. The Commission considers this factor extremely important because, while it may be quite difficult to predict the effectiveness of a plan, experience with an existing plan should greatly enhance the directors' ability to make an informed decision about whether that plan or an alternative would be of benefit to the fund.

### Reasonable Business Judgment

Section (e) permits implementation of a plan only if the directors "conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under section 36 (a) and (b) of the Act [15 U.S.C. 80a–35 (a), (b)],[35] that there is a reasonable likelihood that the plan will benefit the company and its shareholders." This section would place the ultimate responsibility for a decision to use fund assets with the directors, both the disinterested directors and the board as a whole. It is intended to make clear that they would possess a significant measure of discretion but also that formal compliance with other provisions of the rule would not provide any safe harbors. The Commission believes that the authority for making the decision to use fund assets for distribution must carry with it accountability for that decision. What constitutes reasonable business judgment in a given case would depend on all the pertinent facts and circumstances of that case.[36]

### Disclosure and Reporting Requirements

Rule 12b–1 would require a plan to use fund assets for distribution to be submitted to shareholders for approval. The proxy statement relating to such a proposal would have to describe all material aspects of the plan and of any agreements related to implementation of the plan, including, but not necessarily limited to, the purposes of the plan; the approximate amount the fund is proposing to spend; the manner in which the fund proposes to spend it; and any direct or indirect financial interest in the operation of the proposed plan or related agreements of any person who is an interested person of the fund as defined in section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)], or of any director who is not an interested person of the fund. If shareholders were being asked to vote on the renewal of a plan, it would appear appropriate to include as well the amount spent by the fund in the previous fiscal year, as a total dollar amount and as a percentage of average net assets during that period, and the benefits to the fund from such expenditures.[37]

In addition, a mutual fund which has adopted a plan under rule 12b–1 pursuant to which it uses its assets for distribution should disclose all the material aspects of that plan, and of any agreements with other persons relating to implementation of the plan, in its currently effective prospectus. Such disclosure should include, among other material facts, the amount spent by the fund for distribution during the previous fiscal year, both as a total dollar amount and as a percentage of the fund's average net assets during that period; the manner in which the amount was spent (e.g., for advertising, prospectuses sent to prospective investors, etc.); the benefits to the fund from such expenditures; and any direct or indirect financial interest in the operation of the plan or agreements relating thereto of any interested person of the fund or of any director who is not an interested person of the fund.[38]

It should be noted that the Commission has taken the position in the *Vanguard* proceeding that a fund which bears distribution expenses but which does not charge a front-end sales load cannot refer to itself as a "no-load" fund or use equivalent terminology. Such a fund could say that it charges no sales commission, but would have to make clear that shareholders would pay for distribution by means of charges against assets. As stated above, this position was reiterated in Release No. 10252[39] and the Commission sees no need to change it at this time. Further consideration will be given to this issue in connection with the *Vanguard* proceeding.

To ensure annual reporting of expenditures for distribution by funds which have undertaken a plan pursuant to rule 12b–1, the Commission is proposing a new item 9 to part II of form N–1 [17 CFR 239.15, 274.11], the integrated registration and reporting form for open-end management investment companies under the Act and the Securities Act of 1933. New item 9 would require substantially the same disclosure as that described above for prospectuses, and responses to it would be required as part of the annual update of registration statements filed under the Act pursuant to rule 8b–16 [17 CFR 270.8b–16]. Because most mutual funds, especially those which incur distribution expenses, will file annual updates of their prospectuses in order to engage in a continuous offering of their shares under the Securities Act of 1933, they should be able to answer new item 9 in the update required by rule 8b–16 by

[35] Section 36(a) of the Act provides for injunctive and other relief against directors and other specified persons for any breach of fiduciary duty involving personal misconduct. The legislative history of the section indicates that: "In appropriate cases, nonfeasance of duty or abdication of responsibility would constitute a breach of fiduciary duty involving personal misconduct." H.R. Rep. No. 1382, 91st Cong., 2d Sess. 37 (1970); S. Rep. No. 184, 91st Cong., 2d Sess. 36 (1969). Section 36(b) specifies that the investment adviser of a registered investment company and certain other persons are "deemed to have a fiduciary duty with respect to the receipt of compensation for services, or payments of a material nature, paid by such registered investment company, or by its security holders." In complying with their obligation under sections 15 and 36 of the Act to consider the appropriateness of advisory fees paid to the company's investment adviser, directors should take into account the benefits accruing to the investment adviser from a plan to use fund assets to pay expenses incurred in connection with the distribution of fund shares. Cf. *Mutual Fund Amendments: Hearings Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. 177–78 (1969) (statement of Hamer Budge).

[36] See, e.g., *Tannenbaum* v. *Zeller*, 552 F.2d 402, 428 (2d Cir.), *cert. denied*, 434 U.S. 934 (1977).

[37] See item 21 of schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94–29 (June 4, 1975)]. Item 21 requires disclosure of matters with respect to which action is to be taken and which are not specifically referred to elsewhere in schedule 14A.

[38] Although proposed rule 12b–1 contains no specific disclosure requirements, the prospectus disclosure described above would be required by rule 408 [17 CFR 230.408] under the Securities Act of 1933 [15 U.S.C. 77a et seq. as amended by Pub. L. No. 94–29 (June 4, 1975)], which requires addition to the registration statement of "such further material information . . . as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."

[39] See n. 3 supra and accompanying text.

cross-referencing to the disclosure in the prospectus. The Commission is also proposing the addition of a new subsection (b)(15) to item 1 of part II of form N-1, to require that the distribution plan and any related agreements be filed as exhibits to the registration statement. Given the broad discretion afforded to funds by proposed rule 12b-1, the Commission believes that some form of annual reporting of funds' expenditures is necessary to monitor funds' actions in this area, and it has endeavored to fashion requirement that will not impose a substantial additional reporting burden. The staff will monitor the use of fund assets for distribution both as part of its normal review of disclosure documents and as part of its inspection program.

### Proposed Rule 17d-3

Section 17(d) of the Act [15 U.S.C. 80a-17(d)] and rule 17d-1 thereunder [17 CFR 270.17d-1], in general, prohibit an investment company from entering into a "joint enterprise or other joint arrangement or profit-sharing plan" (as defined in paragraph (c) of the rule) with any affiliated person or principal underwriter, or any affiliated person of such person or principal underwriter, unless an application regarding such joint arrangement has been filed with the Commission and granted by an order before the arrangement is effectuated. It is possible that arrangements whereby a fund would make payments for distribution could involve it in a "joint enterprise" with an affiliated person, but the prior review and approval required by rule 17d-1 would not appear to be necessary if the safeguards of rule 12b-1 have already been applied in such cases. The Commission is, therefore, proposing rule 17d-13 [17 CFR 270.17d-3] to provide an exemption from section 17(d) and rule 17d-1 to the extent necessary for agreements between funds and their affiliated persons or principal underwriters (or affiliated persons of such persons or principal underwriters) whereby payments are made by the fund with respect to distribution, if such agreements are entered into in compliance with rule 12b-1.

The exemption afforded by proposed rule 17d-3, however, would not extend to arrangements for the joint sharing of distribution costs by investment companies which are affiliated persons (or affiliates of affiliates) of each other (e.g., mutual funds in the same complex). Such arrangements are currently at issue in the application of *The Vanguard Group, Inc.*,[40] and the Commission believes it would be inappropriate at this time to engage in rulemaking with respect to such arrangements.

[40] See n. 3 supra.

### Test of Proposed Rules

I. It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by:

1. Adding a new § 270.12b-1 as follows:

**§ 270.12b-1 Distribution of shares by registered open-end management investment company.**

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act [15 U.S.C. 80a-10(d)]) to act as a distributor of securities of which it is the issuer, except through an underwriter.

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature.

(b) A registered, open-end management investment company ("company") may act as a distributor of securities of which it is the issuer, *Provided* That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing, *and further provided* That:

(1) Such plan, together with any related agreements, has been approved by:

(i) A vote of at least two-thirds of the outstanding voting securities of such company; and

(ii) A vote of at least two-thirds of the members of the board of directors of such company, and the vote of at least two-thirds of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements; and

(2) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(1)(ii);

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company; and

(iv) In the case of an agreement related to a plan,

(A) That it may be terminated at any time, without the payment of any penalty, by a vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment; and

(3) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if selection and nomination of those directors who are not interested persons of such company is committed to the discretion of such disinterested directors;

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of the section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling

their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, including, but not limited to, the following:

(1) The need for independent counsel or experts to assist the directors in reaching a determination;

(2) The nature of the problems or circumstances which purportedly make implementation or continuation of such a plan necessary or appropriate;

(3) The causes of such problems or circumstances;

(4) The way in which the plan would address these problems or circumstances and how it would be expected to resolve or alleviate them, including the nature and approximate amounts of the expenditures, the nature of the anticipated benefits, and the time it would take for those benefits to be achieved;

(5) The merits of possible alternative plans;

(6) The interrelationship between the plan and the activities of any other person who finances or has financed distribution of the company's shares, including whether any payments by the company to such other person are made in such a manner as to constitute the indirect financing of distribution by the company;

(7) The possible benefits of the plan to any other person relative to those expected to inure to the company;

(8) the effect of the plan on existing shareholders;

(9) In the case of a decision on whether to continue a plan, whether the plan has in fact produced the anticipated benefits for the company and its shareholders;

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under State law and under sections 36 (a) and (b) [15 U.S.C. 80a–35 (a) and (b)] of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders; and

(f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place.

2. Adding a new § 270.17d–3 as follows:

**§ 270.17d–3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.**

An affiliated person of, or principal underwriter for, a registered open-end management investment company and an affiliated person of such a person or principal underwriter shall be exempt from section 17(d) of the Act [15 U.S.C. 80a–17(d)] and rule 17d–1 thereunder [17 CFR 270.17d–1], to the extent necessary to permit any such person or principal underwriter to enter into a written agreement with such company whereby the company will make payments in connection with the distribution of its shares, *Provided* That:

(a) Such agreement is made in compliance with the provisions of § 270.12b–1 of this part; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

II. It is proposed to amend Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations by:

1. Adding new Item 1(b)(15), Part II of Form N–1 as follows:

**§ 239.15 Form N–1 for open-end management investment companies registered on Form N–8a.**

**§ 274.11 Form N–1, registration statement of open-end management investment companies.**

* * * * *

Item 1. Financial Statements and Exhibits.

* * * * *

(b) Exhibits:

* * * * *

(15) copies of any plan entered into by Registrant pursuant to rule 12b–1 under the 1940 Act, which describes all material aspects of the financing of distribution of Registrant's shares, and any agreements with any person relating to implementation of such plan.

2. By adding new Item 9, Part II, of Form N–1 and renumbering current Item 9 in Part II:

**§ 239.15 Form N–1 for open-end management investment companies registered on form N–8A.**

**§ 274.11. Form N–1, registration statement of open-end management investment companies.**

* * * * *

Item 9. Distribution Expenses.

Furnish a summary of the material aspects of any plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The summary should include, among other material information, the following:

(a) The amounts paid by the Registrant under the plan during the last fiscal year, as a total dollar amount and a percentage of Registrant's average net assets during that period;

(b) The manner in which such amount was spent (e.g., advertising, printing and mailing of prospectuses to other than current shareholders; compensation to underwriters, dealers and sales personnel, etc.);

(c) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Registrant; or

(ii) Any director of the Registrant who is not an interested person of the Registrant; and

(d) The benefits, if any, to the company resulting from the plan.

*Instruction:* In responding to this item the Registrant should take note of the requirements of rule 12b–1 under the 1940 Act [17 CFR 270.12b–1].

(New rule 12b–1 is promulgated pursuant to the provisions of sections 12(b) and 38(a) [15 U.S.C. 80a–37(a)] of the Act. New rule 17d–3 is promulgated pursuant to the provisions of sections 17(d) and 38(a) of the Act. New Items 1(b)(15) and 9 of Part II, Form N–1, are promulgated pursuant to the provisions of sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77(f), 77(g), 77(h), 77(j) and 77s(a)], and sections 8 [15 U.S.C. 80a–8] and 38(a) of the Act.)

By the Commission.

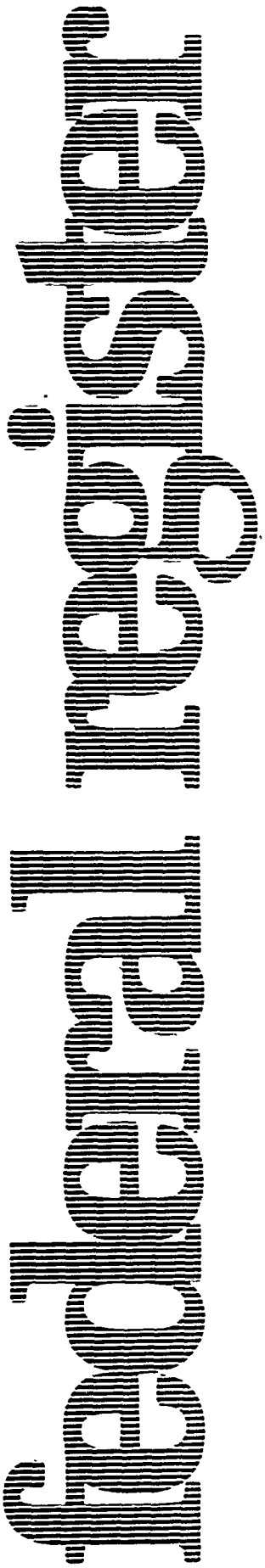
George A. Fitzsimmons,

*Secretary.*

September 7, 1979.

[FR Doc. 79–28709 Filed 9–14–79; 8:45 am]

BILLING CODE 8010–01–M



Monday
September 17, 1979

Part VIII

# Equal Employment Opportunity Commission

Privact Act; Systems of Records

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## PRIVACY ACT OF 1974

## Republication of Privacy Act Systems of Records

ACTION: Publication of Fourth Annual Compilation of Privacy Act Systems of Records maintained by the Equal Employment Opportunity Commission.

SUMMARY: Publication of the Commission's Annual Compilation as required by the Privacy Act of 1974, 5 U.S.C.§ 552a(e)(4) (Pub. L. 93-597).

DATES: Notice of this compilation is effective September 17, 1979.

FOR FURTHER INFORMATION CONTACT: Constance L. Dupre, Associate General Counsel, Legal Counsel Division, EEOC, 2401 "E" Street, N.W., Washington, D.C. 20506, (202) 634-6595.

SUPPLEMENTARY INFORMATION: A compilation of the Commission's Privacy Act systems of records was most recently published at 43 FR 39930 (September 8, 1978). Since that publication, the Commission has not made any amendments to those systems of records. Appendix A has been updated to reflect the new addresses of the Commission's field offices. References to Regional Directors and Regional Attorneys in System EEOC-6, Regional Directors in System EEOC-7 and System EEOC-9 and the Dallas Regional Director in System EEOC-13 as being system managers have been deleted. Due to the Commission's internal reorganization, Regional Offices, Regional Director positions and Regional Attorney positions have been abolished. As a result of the Commission's internal reorganization, Area Offices and Area Directors have been added as system locations and systems managers for System EEOC-3 and System EEOC-7.

The systems of records of the Equal Employment Opportunity Commission published below are current as of September 17, 1979.

Signed at Washington, D.C. this 31st day of August, 1979.

For the Commission.

ELEANOR HOLMES NORTON,
*Chair.*

TABLE OF CONTENTS



### EEOC—1 (Reserved)

### EEOC—2

System name: Attorney Referral List—EEOC.

System location: All district offices (see appendix).

Categories of individuals covered by the system: Attorneys.

Categories of records in the system: Contains attorney's names, business addresses and telephone numbers, nature and amount of civil rights litigation experience, state and Federal bar admission; whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorney will accept; and whether the attorneys speak a foreign language fluently.

Authority for maintenance of the system: 42 U.S.C. 2000e-4(g); 44 U.S.C. 396(a)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by EEOC personnel as a source of attorneys to whom charging parties can be referred to handle the litigation of their title VII complaints.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored on prepared forms and 3 inch by 5 inch cards.

Retrievability: Indexed alphabetically by names of the attorneys.

Safeguards: Access to this system of records is restricted to EEOC district office personnel who have a legitimate use for the information contained therein. This system is stored in a filing cabinet.

Retention and disposal: Maintained until the Commission is notified that an attorney no longer wishes to be included on the referral list. Upon such notification, records are destroyed by manual shredding.

System manager(s) and address: The District Counsel at each EEOC district office (see appendix).

Notification procedure: Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested; (1) full name of the individual; (2) mailing address to which reply should be sent.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: Attorneys.

### EEOC—3

System name: Charge of Discrimination Case Files—EEOC.

System location: District office or area office where the charge of discrimination was filed (see appendix).

Categories of individuals covered by the system: Any aggrieved individuals who charge that an unlawful employment practice within the meaning of title VII of the Civil Rights Act of 1964, as amended, has been committed by an employer, employment agency, labor organization or joint labor-management apprenticeship committee.

Categories of records in the system: Grievance filed by charging party alleging discrimination, original communication, perfected charge, amended charge; copy of deferral letter to state; communication requesting assumption of jurisdiction; receipt for copy of charge; receipt for notification of charge; analysis of deferral agency action or nonaction; charging party's statements and affidavits; report of initial and exit interviews; follow-up letter from charging party; statements and affidavits of charging party's witnesses; statement of respondent and respondent's witnesses; respondent's statement of position; correspondence and documentation related thereto; documentary evidence gathered from respondent such as charging party's records of jobs and earnings, records of jobs and earnings of coworkers, seniority list, job titles and an analysis of such documents; affidavits or statements of any additional witnesses interviewed and copies of any documents submitted by them; observations made on a tour of respondent's facilities, organizational charts, diagrams, summaries of comments made by employees regarding work facilities, EEO data, EEO Report forms; community background data such as racial and ethnic composition, education level by minority group status and sex, average income by minority status and sex, and history of employment relationships; collective bargaining agreements when relevant to the issue and related supplements or modifications to the contracts; copies of any subpoenas issued, and any petitions to modify or revoke; copies of any temporary restraining orders issued to seek preliminary relief in the case; investigator's notices and analysis of data; Decisions and Letters of Determination; conciliation agreements; statements or affidavits of additional witnesses contacted in connection with the investigation made; and any additional evidence gathered during the course of the investigation.

Authority for maintenance of the system: 5 U.S.C. 301; 42 U.S.C. 2000e-5, -8, and -9; 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The purpose of this system of records is to provide for the federal prohibition against employment discrimination in the private and public sector based on race, color, religion, sex or national origin. The records are the official file to be utilized by authorized EEOC personnel, including investigators, conciliators, attorneys, research assistants and analysts, Commissioners, Compliance personnel and Regional and District Directors, in making an official determination regarding the validity of the charge of discrimination and as supportive material for any cases

which are subsequently conciliated, or litigated by the EEOC or the Department of Justice. Other uses include the following: (1) to conduct compliance reviews with local, State and Federal agencies, such as the Office of Federal Contract Compliance, Department of Justice, Department of Labor, Office of Revenue Sharing of the Treasury Department, Law Enforcement Assistance Administration, and other Federal agencies as may be appropriate or necessary to carrying out the Commission's functions under the title (see 42 U.S.C. 2000e-4(g)(1), 8 (b) and (d)); (2) sharing information contained in these records with State and local agencies administering State or local fair employment practices laws (see 42 U.S.C. 2000e-4(g)(1), 8 (b) and (d)); (3) sharing information in case files with the following person(s) in contemplation of or in connection with title VII litigation:

(a) Charging Parties and their attorneys;

(b) Aggrieved persons in case files involving Commissioner Charges and their attorneys provided that such persons have been notified of their status as aggrieved persons pursuant to section 1601.25(c) of the Commission's Procedural Regulations;

(c) Persons or organizations filing on behalf of an aggrieved person, provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose and their attorneys;

(d) Employees of Commission-funded groups such as the Mexican-American Legal Defense and Education Fund and Lawyer's Committee for Civil Rights Under Law for the purpose of reviewing information in case files to determine the appropriateness of referral to private attorneys as a service to charging parties, provided that the Commission-funded group is reviewing the information at the request of the charging party;

(e) Respondents and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII; and (4) cooperating with private Title VII litigants and prospective Title VII litigants by allowing, when requested, access to information in other case files involving the same respondent, provided that the information in the other case files is relevant or material to the private litigant's case.

Disclosure of the status of the processing of a charge of employment discrimination may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders, tape and computer print-outs.

Retrievability: Cross-indexed by charging party name, respondent name, and charge number; may be retrieved by any of the above three indexes.

Safeguards: Records are handled by authorized personnel of the Equal Employment Opportunity Commission and others; see routine uses. Premises are locked when authorized personnel are not on duty. Periodic security checks and emergency planning.

Retention and disposal: Case files which are received in the Office of Compliance and the Office of General Counsel are returned to their respective field offices. Files are retired to Federal Records Center one year after the year of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance); destroyed after three additional years, except landmark cases, which are retained.

System manager(s) and address: District Director or Area Director of the field office where charge was filed.

Systems exempted from certain provisions of the act: System is exempt under 5 U.S.C. 552a(k)(2).

EEOC—4

System name: Commissioners' Biographical File—EEOC.

System location: Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

Categories of individuals covered by the system: Current and former Commissioners of EEOC.

Categories of records in the system: Includes name, date and place of birth, education and employment histories, Congressional confirmation hearing transcript, speeches, and publications.

Authority for maintenance of the system: 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by the staff of the Office of Congressional Affairs to answer public and Congressional inquiries regarding EEOC Commissioners.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored on paper.

Retrievability: Indexed alphabetically by last name of the Commissioner.

Safeguards: Stored in standard file cabinets. Available to office employees and Commissioners.

Retention and disposal: Maintained indefinitely.

System manager(s) and address: Director, Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

Notification procedure: Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual, and the mailing address to which the reply should be mailed.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: The Commissioner to whom the record pertains, publications, and original data generated by the Commission.

EEOC—5

System name: Correspondence and Congressional Inquiries—EEOC.

System location: Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

Categories of individuals covered by the system: Current and former EEOC employees, charging parties, members of the general public.

Categories of records in the system: Includes name of inquiring individuals and information submitted by them; date inquiry received; date response due; to whom inquiry assigned; date response sent out; issue raised in the inquiry.

Authority for maintenance of the system: 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used (a) as a control of incoming correspondence, a record file as to the nature and status of the correspondence, a reference of assignment for outgoing response, a reference to previous correspondence on the same subject; and (b) to avoid duplication of responses and to assure a reply to Congressional inquiries.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored in loose-leaf notebooks and on control slips.

Retrievability: Indexed numerically by date of incoming letter and alphabetically by name of the inquiring member of Congress and inquiring party.

Safeguards: Stored in standard file cabinets. Access to the records of daily incoming and outgoing correspondence is limited to office employees. Records of these files are stored in locked desk drawers.

Retention and disposal: Retained for six months after completion of necessary action, then destroyed manually. Material relating to specific subjects becomes part of the subject's official file.

System manager(s) and address: Director, Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506.

Notification procedure: Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: Correspondence from members of Congress and their staffs, charging parties, members of the general public, and data generated within the Commission.

EEOC—6

System name: Employee Alcoholism and Drug Abuse Records—EEOC.

System location: Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506, regional and district offices and regional litigation centers (see appendix).

Categories of individuals covered by the system: Current and former employees of EEOC.

Categories of records in the system: Contains information relating to individuals who are referred to the Public Health Service, other agency operating health facilities, alcoholic and drug abuse treatment and/or rehabilitation centers, and private physicians.

Authority for maintenance of the system: 5 U.S.C. 301; 5 U.S.C. 7901; 42 U.S.C. 218; 44 U.S.C. 396(a); 29 CFR 1510; 45 CFR 57.1 et seq.; 38 FR, Part 1401, CSC FPM Letters No. 792-6 and -7; Bureau of the Budget Circular A-68, August 28, 1964; Bureau of the Budget Circular A-72, June 18, 1965.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by authorized personnel of the EEOC Headquarters, regional and district offices, personnel division upon the individual's request; by governmental personnel for purposes of attaining benefits; for disclosure in connection with judicial or administrative proceedings; for disclosure to medical personnel to meet a medical emergency; for disclosure to qualified personnel for purposes of research, audits, or program evaluation; for disclosure of a minor patient to his/her parents under the guidelines set forth in 21 CFR, Part 140.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders.

Retrievability: Indexed by the names of the persons on whom they are maintained.

Safeguards: Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. HM Individual health record card: six years after last entry. Log of visit to facility: if summarized, three months after last entry; if not summarized, two years after last entry. Health record case files, related forms, correspondence and papers which document employee medical history except pre-employment health qualification placement records, disability retirement exams, and fitness for duty examinations which become a part of the OPF (Standard Form 66) upon separation, are maintained for a period of six years after date of last entry.

System manager(s) and address: Director of Personnel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506. District Directors, and EEOC district locations (see appendix).

Notification procedure: Individuals who have been referred to PHS, or other agency operating health facilities are aware of that fact and any inquiries concerning this system should be addressed to the Director of Personnel, headquarters, or the District Directors at the district locations where individual is currently employed. Individuals should provide their full name, date of birth, and social security number.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: The individual to whom the record pertains; private physicians; medical institutions; Veterans Administration benefits program; office of workers' compensation programs; pay and leave allowance cards; health benefits records system; CSC personnel management evaluation and audit record system.

EEOC—7

System name: Employee Pay and Leave Records—EEOC.

System location: All locations listed in appendix.

Categories of individuals covered by the system: Current and former employees of EEOC.

Categories of records in the system: Time and attendance cards and forms; leave records (employee name, branch or office, pay period ending; leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); bond issuance and bond balance.

Authority for maintenance of the system: 5 U.S.C. 301; 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: May be used by authorized EEOC personnel to keep a daily record of leave and overtime acquired and used; as a basis for maintaining an employee's official time card; and as a counseling aid for employees and to assist in evaluating an employee's performance.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Routine uses of records maintained in this system include providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Chairman. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Chairman.

In the absence of a withholding agreement, the social security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with Section 7 of the Privacy Act, 5 U.S.C. 552a, Pub. L. 93-579.

Records maintained in this system may be disclosed, as necessary, to employees of the Educational Systems Corporation for research purposes only to study the effects of providing day-care services on the job productivity and worker satisfaction of Commission employees.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored on prepared forms and on punched and unpunched cards.

Retrievability: Indexed alphabetically by name, social security number, and/or chronologically by event and name.

Safeguards: Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms.

Retention and disposal: Maintained from three months to one year. They are then manually destroyed.

System manager(s) and address: Director of each Commission Office or Division at headquarters; District Directors, and Area Directors (see appendix).

Notification procedure: Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office or Division where employed or to the District Director or Area Director if employed at a field installation (see appendix). Former employees separated from the Commission and no longer in the federal service should address all inquiries to the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118. The individual should provide his or her full name, date of birth, social security number and mailing address.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: Official personnel folders, data submitted by employees, and data submitted by the offices where the individuals are or were employed.

EEOC—8

System name: Employee Travel and Reimbursement Records.

System location: EEOC Headquarters, 2401 E Street NW., Washington, D.C. 20506.

Categories of individuals covered by the system: Current and former EEOC employees.

Categories of records in the system: Includes travel orders, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the differ-

ence between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

Authority for maintenance of the system: 31 U.S.C. 66a, 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by authorized personnel in the Financial Services Division at headquarters as a record of planned and completed travel expenses; as a justification of government travel disbursements; and to record accounts receivable from and payable to the government for accounts advanced to the employee or owed to the employee for official travel and other purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Stored on magnetic tape.

Retrievability: Indexed by an assigned employee code.

Safeguards: Access to any information maintained therein is limited to employees whose official duties require such access.

Retention and disposal: The records are maintained for the current fiscal year and two preceding fiscal years. They are then retired to the Federal Records Center.

System manager(s) and address: Chief, Financial Services Division, EEOC, 2401 E Street NW., Washington, D.C. 20506.

Notification procedure: Inquiries concerning this system of records should be addressed to the System manager. It is necessary to furnish the following information (1) name (2) social security number (3) mailing address to which the response is to be sent.

Record access procedures: Same as above.

Contesting record procedures: Same as above.

Record source categories: Bills, receipts, and claims presented by employees and original data generated by the Commission.

EEOC—9

System name: Labor-Management Negotiated Agreements—EEOC.

System location: Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506. Regional and district offices.

Categories of individuals covered by the system: Current and former employees of EEOC.

Categories of records in the system: Contains information or documents relating to the Commission's labor-management relations program, including information and decisions by the Department of Labor, Impasses Panel, and Federal Labor Relations Council.

Authority for maintenance of the system: 5 U.S.C. 301; 5 U.S.C. 7001; 44 U.S.C 396(a); Lloyd-LaFollette Act of 1912; Executive Order 11491, as amended; 5 CFR 711.101-711.102.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by authorized EEOC personnel to respond to inquiries or requests from parties to the negotiated agreement; inquiries from other federal agencies; a court subpoena or to refer to a District Court; requests by parties having standing under Executive Order 11491, as amended; and in a proceeding authorized by Executive Order 11491, as amended.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in file folders, binders, and on index cards.

Retrievability: Indexed by subject matter and the names of parties involved.

Safeguards: Limited to individuals whose official duties require access and the parties having a standing in a particular labor-management proceeding.

Retention and disposal: Maintained up to five years and sent to the National Archives.

System manager(s) and address: Director of Personnel, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506. District Directors at district offices (see appendix).

Notification procedure: Employees and former employees of EEOC wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of Personnel, at the above address, if they are or were employed at headquarters, Washington, D.C. or to the District Directors at the installation where the individual is or was employed (see appendix). The individuals should provide their full name, date of birth and social security number.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: The individual to whom the record pertains; members of the bargaining unit; EEOC officials whose official duties require access to the records; authorized officials from the Department of Labor, Civil Service Commission, Federal Mediation and Conciliation Service, Federal Labor Relations Council, Federal Service Impasses Panel, and other third parties to disputes resolution, including arbitrators; other federal agencies having a standing in the Commission's dispute or requesting information; research groups; courts and information; research groups; courts and litigation; the Congress upon request.

EEOC—10 (Reserved)

EEOC—11

System name: Correspondence File—EEOC.

System location: Seattle District Office and Chicago District Office (See Appendix).

Categories of individuals covered by the system: Charging parties, applicants for employment and members of the general public.

Categories of records in the system: Includes name of inquiring individuals and information submitted by them; date inquiry received; date response sent out; issue raised in the inquiry; to whom inquiry assigned.

Authority for maintenance of the system: 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used (a) as a control of incoming correspondence, a record file as to the nature and status of the correspondence, a reference of assignment for outgoing response, a reference to previous correspondence on the same subject; and (b) to avoid duplication of responses and to assure a reply to all those who have sent inquiries to this office.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: These records are stored on paper in file folders.

Retrievability: This system is indexed numerically by date of inquiry and alphabetically by name of inquirer for each yearly quarter.

Safeguards: The files are stored in locked file cabinets. Access to the files is limited to office employees.

Retention and disposal: Retained for one (1) year after completion of necessary action, then destroyed manually.

System manager(s) and address: Director, Seattle District Office, Equal Employment Opportunity Commission, Times Square Building, 4th Floor, 414 Olive Way, Seattle, Washington 98101.

Notification procedure: Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) full name of the individual, (2) mailing address to which reply should be mailed, (3) date(s) of correspondence.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: Correspondence from charging parties, applicants for employment and the general public.

EEOC—12

System name: Officials' Biographical File—EEOC.

System location: Office of Public Affairs, Equal Employment Opportunity Commission, Columbia Plaza, 2401 E Street NW., Washington, D.C.

Categories of individuals covered by the system: Current and past EEOC officials.

Categories of records in the system: Includes name, date and place of birth, education and employment histories, job duties, past experiences.

Authority for maintenance of the system: 44 U.S.C. 396(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by the staff of the Office of Public Affairs to answer public inquiries regarding EEOC officials.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: These records are stored on paper in file folders.

Retrievability: This system is indexed alphabetically by last name of official.

Safeguards: The files are stored in a standard file cabinet which is available to office employees.

Retention and disposal: Maintained indefinitely.

System manager(s) and address: Director, Office of Public Affairs, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

Notification procedure: Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) full name of the individual, (2) mailing address to which reply should be mailed.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: The official to whom the information pertains.

EEOC—13

System name: Employee Performance, Effectiveness and Evaluation System.

System location: Dallas District Office, Houston District Office, New Orleans District Office (see appendix A for Office Directors).

Categories of individuals covered by the system: Equal Employment Specialists employed within the above mentioned offices.

Categories of records in the system: Names of employees, dates of evaluations, file numbers of compliance files evaluated, and categorization and description of any errors or deficiencies in the investigation or conciliation, job title and/or grade, and tabulation of units of work completed, and quality control data.

Authority for maintenance of the system: 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Used by District Directors and Deputy Directors of District Offices within the region for assignment making, for employee evaluation of error patterns, for definition of training needs, and for identification of problems which may be corrected by changing procedures.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: These records are stored on paper and prepared forms in file folders.

Retrievability: This system is indexed alphabetically by the last name of employee or numerically by employee code.

Safeguards: The files are locked in file cabinets or stored in desk drawers. Access is limited to Commission employees whose official duties require access.

Retention and disposal: Records are retained for two years after preparation or until completion of any grievance, complaint, award, or other action, adverse or otherwise, which may require their retention for longer than two years. They are then destroyed.

System manager(s) and address: Director, Dallas District Office, Houston District Office, and New Orleans District Office.

Notification procedure: Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) the full name of the individual; (2) the district office where the individual is or was employed; (3) social security number; (4) the address to which the response should be sent.

Record access procedures: Same as the above.

Contesting record procedures: Same as the above.

Record source categories: Work units are submitted by employees. Analyses are made of employees' and supervisors' performance by supervisors and District Director, respectively.

EEOC—14 (Reserved)

Appendix A

ALBUQUERQUE AREA OFFICE (Phoenix District)
Western Bank Building, Suite 1515
505 Marquette, N.W.
Albuquerque, New Mexico 87101

ATLANTA DISTRICT OFFICE
Citizens Trust Building, 10th Floor
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

BALTIMORE DISTRICT OFFICE
Rotunda Building, Suite 210
711 West 40th Street
Baltimore, Maryland 21211

BIRMINGHAM DISTRICT OFFICE
2121 Eighth Avenue, North
Birmingham, Alabama 35203

BOSTON AREA OFFICE (New York District)
150 Causeway Street, Suite 1000
Boston, Massachusetts 02114

BUFFALO AREA OFFICE (New York District)
One West Genesse Street, Room 320
Buffalo, New York 14202

CHARLOTTE DISTRICT OFFICE
403 N. Tryon Street, 2nd Floor
Charlotte, North Carolina 28202

CHICAGO DISTRICT OFFICE
Federal Building, Room 234
536 South Clark Street
Chicago, Illinois 60605

CINCINNATI AREA OFFICE (Cleveland District)
Federal Building, Room 7019
550 Main Street
Cincinnati, Ohio 45202

CLEVELAND DISTRICT OFFICE
Engineers' Building, Room 602
1365 Ontario Street
Cleveland, Ohio 44114

DALLAS DISTRICT OFFICE
Corrigan Tower, 6th Floor
212 North St. Paul
Dallas, Texas 75201

DAYTON AREA OFFICE (Cleveland District)
Federal Building
200 West 2nd Street
Dayton, Ohio 45402.

DENVER DISTRICT OFFICE
1531 Stout Street, 6th Floor
Denver, Colorado 80202

DETROIT DISTRICT OFFICE
Federal Bldg. & Old Courthouse
231 West Lafayette Street, Room 461
Detroit, Michigan 48226

EL PASO AREA OFFICE (Dallas District)
Property Trust Building
2211 East Missouri, Room E-235
El Paso, Texas 79903

GREENVILLE AREA OFFICE (Atlanta District)
Bankers Trust Bldg. 5th Floor
7 North Laurens Street
Greenville, South Carolina 29602

HOUSTON DISTRICT OFFICE
Federal Building, Room 1101
2320 LaBranch
Houston, Texas 77004

INDIANAPOLIS DISTRICT OFFICE
Federal Building, U.S. Courthouse
46 East Ohio Street, Room 456
Indianapolis, Indiana 46204

JACKSON AREA OFFICE (Birmingham District)
Petroleum Building, Suite 500
200 East Pascagoula Street
Jackson, Mississippi 39201

KANSAS CITY AREA OFFICE (St. Louis District)
1150 Grand, 1st Floor
Kansas City, Missouri 64106

LITTLE ROCK AREA OFFICE (New Orleans District)
Federal Building
700 West Capitol
Little Rock, Arkansas 72201

LOS ANGELES DISTRICT OFFICE
3255 Wilshire Blvd., 9th Floor
Los Angeles, California 90010

LOUISVILLE AREA OFFICE (Memphis District)
U.S. Post Office & Courthouse
601 West Broadway, Room 105
Louisville, Kentucky 40202

MEMPHIS DISTRICT OFFICE
1407 Union Ave., Suite 502
Memphis, Tennessee 38104

MIAMI DISTRICT OFFICE
DuPont Plaza Center, Suite 414
300 Biscayne Blvd. Way
Miami, Florida 33131

MILWAUKEE DISTRICT OFFICE
342 North Water Street, Room 612
Milwaukee, Wisconsin 53202

MINNEAPOLIS AREA OFFICE (Milwaukee District)
Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402

NASHVILLE AREA OFFICE (Memphis District)
Parkway Towers, Suite 1822
404 James Robertson Parkway
Nashville, Tennessee 37219

NEWARK AREA OFFICE (New York District)
744 Broad Street, Room 502
Newark, New Jersey 07102

NEW ORLEANS DISTRICT OFFICE
F. Edward Hébert Federal Building
600 South Street
New Orleans, Louisiana 70130

NEW YORK DISTRICT OFFICE
90 Church Street, Room 1301
New York, New York 10007

NORFOLK AREA OFFICE (Baltimore District)
215 East Plume Street
Norfolk, Virginia 23510

OAKLAND AREA OFFICE (San Francisco District)
George P. Miller Federal Building
1515 Clay Street
Oakland, California 94612

OKLAHOMA CITY AREA OFFICE (Dallas District)
50 Penn Place, Suite 1430
Oklahoma City, Oklahoma 73118

PHILADELPHIA DISTRICT OFFICE
127 North 4th Street, Suite 200
Philadelphia, Pennsylvania 19106

PHOENIX DISTRICT OFFICE
201 North Central Ave., Suite 1450
Phoenix, Arizona 85073

PITTSBURGH AREA OFFICE (Philadelphia District)
Federal Building, Room 2038A
1000 Liberty Ave.
Pittsburgh, Pennsylvania 15222

RALEIGH AREA OFFICE (Charlotte District)
414 Fayetteville Street
Raleigh, North Carolina 27608

RICHMOND AREA OFFICE (Baltimore District)
400 North 8th Street, Room 6213
Richmond, Virginia 23219

SAN ANTONIO AREA OFFICE (Houston District)
727 East Durango, Suite B-601
San Antonio, Texas 78206

SAN DIEGO AREA OFFICE (Los Angeles District)
San Diego Federal Building
880 Front Street
San Diego, California 92101

SAN FRANCISCO DISTRICT OFFICE
1390 Market St., Suite 325
San Francisco, California 94102

SAN JOSE AREA OFFICE (San Francisco District)
Crocker Plaza Building
84 West Santa Clara
San Jose, California 95113

SEATTLE DISTRICT OFFICE
Dexter Horton Building
710 Second Avenue
Seattle, Washington 98104

ST. LOUIS DISTRICT OFFICE
1601 Olive Street
St. Louis, Missouri 63103

TAMPA AREA OFFICE (Miami District)
700 Twiggs Street
Tampa, Florida 33602

WASHINGTON AREA OFFICE (Baltimore District)
1717 H Street, NW Suite 402
Washington, D.C. 20006

## HEADQUARTERS OFFICES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 2401 E Street NW. Washington, D.C. 20506

OFFICE OF THE CHAIR
OFFICE OF THE VICE CHAIRMAN
OFFICE OF THE COMMISSIONERS
OFFICE OF THE EXECUTIVE DIRECTOR
OFFICE OF THE EQUAL EMPLOYMENT OPPORTUNITY
OFFICE OF INTERNAL AUDIT
OFFICE OF CONGRESSIONAL AFFAIRS
OFFICE OF PUBLIC AFFAIRS
OFFICE OF GENERAL COUNSEL
OFFICE OF POLICY IMPLEMENTATION
OFFICE OF SYSTEMIC PROGRAMS
OFFICE OF PROGRAM PLANNING AND EVALUATION
OFFICE OF GOVERNMENT EMPLOYMENT
OFFICE OF FIELD SERVICES
OFFICE OF SPECIAL PROJECTS AND PROGRAMS
OFFICE OF ADMINISTRATION
OFFICE OF APPEALS AND REVIEW
OFFICE OF INTERAGENCY COORDINATION

### Appendix B

### Additional Routine Uses for Systems EEOC—2 and 4-13

The following "routine uses" were adopted by the Equal Employment Opportunity Commission for systems EEOC—2, and 4-13 at 42 FR 69 (January 3, 1977):

1. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

5. A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

# Reader Aids

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## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|
| DOT/SECRETARY* | USDA/ASCS | | DOT/SECRETARY* | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

## REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

### Rules Going Into Effect Today

**COMMUNITY SERVICES ADMINISTRATION**

47935 8-16-79 / Grantee financial management; non-Federal share requirements for title II, sections 221, 222(a), and 231 programs

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

Food and Drug Administration—

48190 8-17-79 / Performance standards for electronic products

48186 8-17-79 / Tetracycline hydrochloride and oxytetracycline hydrochloride; dissolution test for human and animal drugs

48598 8-17-79 / Thermally processed low-acid foods packaged in hermetically sealed containers; good manufacturing practices

**LABOR DEPARTMENT**

Employment and Training Administration—

48185 8-17-79 / Comprehensive Employment and Training Act; sectarian activities

**NUCLEAR REGULATORY COMMISSION**

47918 8-16-79 / Licensing of production and utilization facilities; facilities and access for resident inspection

### List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing September 10, 1979